TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 642.

J. M. TURNER AND J. M. WELLBORN, PLAINTIFFS IN ERROR,

vs.

THE BOARD OF COMMISSIONERS OF WILKES COUNTY AND O. C. WRIGHT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

FILED DECEMBER 19, 1898.

(17,227.)

(17,227.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 15, 1899.

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1 In the Supreme Court, September Term, 1898.

THE BOARD OF COMMISSIONERS OF WILKES COUNTY and C. C. Wright
vs.
CLARENCE CALL, Treasurer of Wilkes County, and J. M. TURNER and J. M. Wellborn.

The above-named defendants, considering themselves aggrieved by the judgment and decision of the supreme court of North Carolina rendered on the 9th day of November, 1898, excepts to said judgment and decision and prays for a writ of error, to the end that said judgment and decision may be inquired into by the Supreme Court of the United States and all errors found by them be reversed. Wherefore *he* prays that said writ of error be granted and a transcript of the record and proceeding and papers upon which said judgment and decision were rendered, duly authenticated, may be sent to the Supreme Court of the United States.

Raleigh, N. C., Nov. 24th, 1898.

R. N. HACKETT,
Attorney for Defendants J. M. Turner and J. M. Wellborn.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of North Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit wherein Clarence Call, treasurer of Wilkes county, N. C., and J. M. Turner and J. M. Wellborn were defendants, wherein was drawn in question the validity of a
2 statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, a manifest error has happened, to the great damage of the said J. M. Turner and J. M. Wellborn, as by *his* complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 20th day of Dec., 1898, in the said Supreme Court, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

said Supreme Court, the 24th day of Nov., 1898, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-third.

[Seal United States Circuit Court, Eastern Dist. of N. C.]

N. J. RIDDICK,
Clerk of the Circuit Court of the United States for the Eastern District of North Carolina.

Allowed by—
W. T. FAIRCLOTH,
Chief Justice of the Supreme Court of North Carolina.

3 Endorsed as follows: J. M. Turner and J. M. Wellborn, plaintiffs in error, *vs.* The Board of Commissioners of Wilkes County and C. C. Wright. Petition and writ of error. I accept service of the within petition and writ of error this the 25th of November, 1898. A. C. Avery, attorney for the Board of Commissioners of Wilkes County and C. C. Wright.

4 In the Supreme Court, September Term, 1898.

J. M. TURNER and J. M. WELLBORN, Plaintiffs in Error,
vs.
THE BOARD OF COMMISSIONERS OF WILKES COUNTY and C. C. Wright, Defendants in Error.

UNITED STATES OF AMERICA, *ss:*

To the Board of Commissioners of Wilkes County and C. C. Wright, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, on the 20th day of Dec., 1898, pursuant to a writ of error filed in the clerk's office of the supreme court of North Carolina, wherein J. M. Turner and J. M. Wellborn are plaintiffs in error and The Board of Commissioners of Wilkes County and C. C. Wright are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiff- in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness W. T. Faircloth, chief justice of the supreme court of North Carolina, this the 25th day of November, 1898.

W. T. FAIRCLOTH,
Chief Justice of the Supreme Court of North Carolina.

5 Endorsed as follows: J. M. Turner and J. M. Wellborn, plaintiffs in error, *vs.* The Board of Commissioners of Wilkes County and C. C. Wright. Citation. I accept service of the within citation this the 25th of November, 1898. A. C. Avery, attorney for the Board of Commissioners of Wilkes County and C. C. Wright.

6 STATE OF NORTH CAROLINA:

In the Supreme Court.

THE BOARD OF COMMISSIONERS OF WILKES COUNTY and C. C. Wright
vs.
CLARENCE CALL, Treasurer of Wilkes County, and J. M. TURNER and J. M. Weliborn.

Assignment of Errors.

The above-named defendants, J. M. Turner and J. M. Wellborn, consider themselves aggrieved by the judgment and decision of the supreme court of North Carolina rendered on the 9th day of November, 1898, and complain that the said judgment and decision was erroneous, and assign as error that:

1st. That the court erred in the holding that the original charter of the North Western North Carolina Railroad Company and the amendment thereto, enacted in the year 1868, did not authorize the board of commissioners of Wilkes county to submit the question whether said county should subscribe to the capital stock of said company or to subscribe one hundred thousand dollars, with the approval of the qualified voters of said county, to the capital stock of said company.

2nd. That the court erred in holding that the subscription of one hundred thousand dollars to the capital stock of the North Western North Carolina Railroad Company by the board of commissioners of Wilkes county was not authorized by the amendments to the charter of the said North Western North Carolina Railroad Company enacted after the year 1868.

7 3rd. That the court erred in holding that the subscription of one hundred thousand dollars to the capital stock of the North Western North Carolina Railroad Company by the board of commissioners of Wilkes county was not authorized by the provisions of the Code of North Carolina, contained in sections 1996 to 2000, inclusive, or by any other statute.

4th. That the court erred in holding that the holders of any or all of the one hundred thousand dollars in bonds executed by the board of commissioners of Wilkes county and exchanged for the capital stock of the North Western North Carolina Railroad Company, the validity of which was the subject of controversy in this action, were estopped by the recitals in the face of the bonds issued as to the legislation relied upon to authorize the issue of said bonds.

R. N. HACKETT,

Attorney for J. M. Turner and J. M. Wellborn.

8 Endorsed as follows: J. M. Turner and J. M. Wellborn, plaintiffs in error, *vs.* The Board of Commissioners of Wilkes County and C. C. Wright. Assignment of errors. I accept service of the within assignment of errors this the 25th of November, 1898. A. C. Avery, attorney for the Board of Commissioners of Wilkes County and C. C. Wright.

9 BOARD OF COMMISSIONERS OF WILKES COUNTY and C. C. Wright
against
CLARENCE CALL, Treasurer of Wilkes County, and J. M. TURNER and J. M. Wellborn.

In pursuance of an understanding with and at the request of Richard N. Hackett, attorney for J. M. Wellborn and J. M. Turner, I agree that the following amendment may be added to each assignment of error in the transcript of appeal and may be printed as a part of and at the end of each assignment, as if originally incorporated therein, to wit:

"And the said J. M. Turner and J. M. Wellborn, plaintiffs in error, say that the said ruling was in violation of section 10, article 1, of the Constitution of the United States, and deprives them of the protection of said section by impairing the obligation of the contract to pay the bonds issued by the plaintiff board."

A. C. AVERY,
Attorney for the Board of Commissioners of Wilkes County and for C. C. Wright.

December 13, 1898.

10

Bond.

In the Supreme Court, September Term, 1898.

THE BOARD OF COMMISSIONERS OF WILKES COUNTY and C. C. Wright
vs.
CLARENCE CALL, Treasurer of Wilkes County, and J. M. TURNER and J. M. Wellborn.

Bond on writ of error.

Know all men by these presents that we, J. M. Turner and J. M. Wellborn, as principal-, and R. A. Spainhour and S. J. Ginnings, as sureties, are held and firmly bound unto the Board of Commissioners of Wilkes County and C. C. Wright in the full and just sum of one thousand dollars, to be paid to the Board of Commissioners of Wilkes County and C. C. Wright, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this the 23rd day of November, 1898.

Whereas lately, at a term of the supreme court of North Carolina, in a suit depending in said court between The Board of Commissioners of Wilkes County and C. C. Wright, as plaintiffs, and Clarence Call, treasurer of Wilkes county, and J. M. Turner and J. M. Wellborn, as defendants, a judgment was rendered in favor of the plaintiffs and against the defendants, and the said defendants, J. M. Turner and J. M. Wellborn, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse

the judgment in the aforesaid suit, and a citation having issued, directed to said plaintiffs, citing and admonishing them to be and appear at the Supreme Court of the United States, at Washington, on a day named in said citation:

Now, the condition of the above obligation is such that if the said J. M. Turner and J. M. Wellborn shall prosecute said
11 writ to effect and answer all damages and costs if they, the said J. M. Turner and J. M. Wellborn, fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

J. M. TURNER. [SEAL.]
J. M. WELLBORN. [SEAL.]
R. A. SPAINHOUR. [SEAL.]
S. J. GINNINGS. [SEAL.]

R. A. Spainhour, being duly sworn, says that he is worth the sum of five hundred dollars over and above the amount of his homestead and personal property exemptions and his indebtedness.

R. A. SPAINHOUR. [SEAL.]

Sworn to and subscribed before me this 23rd day of November, 1898.

A. M. VANNOY, *C. S. C.*,
By H. J. SMOOK, *D. C.*

S. J. Ginnings, being duly sworn, says that he is worth the sum of five hundred dollars over and above the amount of his homestead and personal property exemptions and his indebtedness.

S. J. GINNINGS. [SEAL.]

Sworn to and subscribed before me this the 23rd day of November, 1898.

A. M. VANNOY, *C. S. C.*,
By H. J. SMOOK, *D. C.* [L. S.]

Approved — 25 day of November, 1898.

W. T. FAIRCLOTH,
Chief Justice of North Carolina.

12 Record from superior court of Wilkes county.

Agreement of Parties.

It is agreed that in addition to the pleadings, and exhibits and affidavits offered at the former hearing, the original charter of the Northwestern North Carolina Railroad Company passed by the constitutional convention of 1868, and all amendments thereto, including the amendatory acts of 1879 and 1881, shall be considered in evidence, and that the amendments passed in 1879 and 1881, purporting to give to another authority to submit the question of subscription to the capital stock of the company, were not passed by the house of representatives in accordance with the requirements of the constitution and the certified exhibits from the journals of

said sessions need not be offered or sent up as a part of the testimony.

It is agreed that the only legislation that is relied upon to give such authority, is the original charter, passed as an ordinance of the constitutional convention of 1868, and the general statute enacted in 1868 as chapter —, being in the same language as contained in the Code, sections 1996 to 2000, both inclusive.

It is further agreed that the plaintiff still objects to the testimony offered for the defendant Call on the former hearing to show when the Northwestern North Carolina Railroad Company was organized, or incorporated.

(Signed) A. C. AVERY,
Attorney for Plaintiffs.

(Signed) RICHARD N. HACKETT,
Attorney for Defendants J. M. Turner and J. M. Wellborn.

Summons.

To the coroner of Wilkes county, Greeting:

You are hereby commanded to summon Clarence Call, sheriff, and *ex officio* treasurer of Wilkes county, the defendant above named, if he be found in your county, to be and appear before the judge of our superior court, at a court to be held in the county of Wilkes, at the court-house in Wilkesboro, on the first Monday after the fourth Monday of February, it being the 7th day of March, 1898, and answer the complaint, which will be deposited in the office of the clerk of the superior court of said county, within the first three days of said term; and let the said defendant take notice, that if he fail to answer the said complaint within the time required by law, the plaintiff will apply to the court for the relief demanded in the complaint.

Hereof fail not, and of this summons make due return.

Given under my hand and seal of said court, this 23d day of December, 1897.

(Signed) A. M. VANNOY,
Clerk Superior Court.

We acknowledge ourselves bound unto Clarence Call, sheriff and *ex officio* treasurer of Wilkes county, the defendant in this
13 action, in the sum of two hundred dollars, to be void, however, if the plaintiffs, The Board of Commissioners of Wilkes County, and C. C. Wright shall pay to the defendant all such costs as the defendant may recover of the plaintiff in this action.

Witness our hands and seals this 23d day of December, 1897.

(Signed) C. C. WRIGHT, [SEAL.]
Chairman pro Tem.

(Signed) R. A. SPAINHOUR. [SEAL.]

Bonds.

We, the undersigned, acknowledge ourselves indebted to the defendant in the above-entitled order in the sum of two hundred

dollars, to be void on condition that the plaintiffs in said action will pay to said defendant such damage, not exceeding said sum of two hundred dollars, as said defendant may sustain by reason of the injunction granted them, if the court shall finally decide that the plaintiff was not entitled thereto.

In witness whereof, we have hereunto set our hand and affixed our seal this the 5th day of January, 1898.

THE BOARD OF COUNTY COMMISSIONERS
OF WILKES COUNTY,
By C. C. WRIGHT, *Chairman pro Tem.*

(Signed) C. C. WRIGHT. [SEAL.]
(Signed) R. A. SPAINHOUR. [SEAL.]

R. A. Spainhour, surety to the foregoing undertaking, maketh oath before me, that he has property over and above his homestead and personal property exemptions, and al- other liabilities, worth the sum of two hundred dollars, the amount mentioned in said undertaking.

(Signed) R. A. SPAINHOUR.

Sworn to and subscribed before me this 5th day of January, 1898; and I hereby affirm the surety to the undertaking, and adjudge it sufficient.

(Signed) A. M. VANNOY, *Clerk.*

Complaint.

The plaintiffs complain and allege:

1. That P. A. Lomax is chairman of the board of county commissioners of Wilkes county; and that W. C. Myers, C. C. Wright, A. M. Church, and R. P. Yates, are county commissioners, an- act with said chairman in discharging the duties as such of the plaintiff board; and that the plaintiff, C. C. Wright, is a resident citizen and tax-payer of the county of Wilkes.

2. That the defendant, Clarence Call, is sheriff, and by virtue of statutes so providing, has been made an *ex officio* treasurer of the county of Wilkes, and is charged with the duty of receiving and disbursing the moneys of said county.

3. That the Northwestern North Carolina Railroad Company was duly incorporated and organized under an ordinance of the constitutional convention of 1868, which was published as chapter 17 of the Constitution and Ordinances and Resolutions of the Constitutional Convention of 1868.

4. That the General Assembly, at its session of 1869–1870, passed an act (which was published as chapter 100 of the Laws of 1869 and 1870), by the terms of which act it was provided that the State of North Carolina might loan to the said railroad company its bonds if secured by mortgage deeds, conveying the franchise and property of said company, the said bonds to be furnished in installments, as the grading of the line of said railroad should progress; and it was further provided by said act that all acts of the General Assembly theretofore passed, authorizing the issuing of bonds to the State to

aid in the completion of the first division as a subscription to the capital stock of said company, be repealed; and the General Assembly of North Carolina, at its session of 1870–1871, passed
14 an act, which is entitled "An act to enable the Northwestern North Carolina Railroad Company to complete their road to Salem" (which is published as chapter 178 of the Laws of 1870–1871), by the terms of which said act the said company was authorized to consolidate with any other company whose line was then built, or to be built and connected with its line, providing such company should agree and contract to finish the line of the Northwestern North Carolina railroad from Greensboro to Salem.

5. That no authority was granted by the State or purported to be granted by the terms of said original charter, or of any of the amendments thereto, hereinbefore mentioned, to any county in the State of North Carolina to subscribe to the capital stock of said company or to create any indebtedness upon any terms or conditions in order to aid in the completion of the line of said company.

6. That the General Assembly, at its session of 1871–1872, passed an act (published as chapter 25 of the Laws of 1871–1872), entitled "An act to amend the charter of the Northwestern North Carolina railroad and for other purposes;" and also at the same session passed another act (which is published as chapter 47 of the Laws of 1871–1872), entitled "An act supplementary to an act, entitled An act to amend the charter of the Northwestern North Carolina Railroad Company," and for other purposes, by the terms of which act it was provided that, upon the acceptance of the amendment of the charter of the said company, the mortgages theretofore executed by said company to the State of North Carolina, to secure loans to said company, should be cancelled; and thereafter the Northwestern North Carolina Railroad Company should be authorized to issue bonds of the company and execute a mortgage deed upon its franchise and property to secure the payment of the principal and interest upon said bonds as they shall fall due. All of said enactments hereinbefore mentioned, as passed by the General Assembly, were duly accepted by the Northwestern North Carolina Railroad Company as amendments to its charter, and became parts thereof; and after their acceptance the State of North Carolina no longer had any interest in the said company, nor did any county in said State, or the citizens of any such county, have any pecuniary interest in said company.

7. That the General Assembly of North Carolina at its session of 1872–1873, passed an act (published as chapter 140 of the Laws of 1872–1873), which so amended the charter of the said company as to authorize subscription to, its capital stock to be paid in real estate; but that no amendment to the charter of said company, and no other statute passed by the General Assembly of the State of North Carolina prior to the 20th day of February, A. D. 1879, granted or purported to grant authority to any county to subscribe to the capital stock of the said Northwestern North Carolina Railroad Company; and that prior to the said 20th day of February the said company was not authorized to build any line of railroad,

except that extending from the town of Greensboro, in Guilford county, to the town of Winston, in Forsyth county, or to extend its line of railroad to or into the county of Wilkes.

8. That the General Assembly, at its session of 1879, passed an act (published as chapter 43 of the Laws of 1879), entitled An act to amend the charter of the Northwestern North Carolina Railroad Company, for the construction of a second division from the town of Winston-Salem, in Forsyth county, by the Yadkin valley in Wilkesboro, to Patterson's factory, Caldwell county. It was provided in the first section of said act that the said company should be authorized and empowered to extend its line by way of Jonesboro and Wilkesboro, in the county of Wilkes, to Patterson's factory, in the county of Caldwell; and section 4 of said act purported to authorize any county in the State of North Carolina to subscribe to the capital stock of said company, when so authorized to do by a vote of the qualified voters of said county; but the said act, in so far as it purported to give such authority, was unconstitutional, null and void, because, when the said act was read the second time and put upon its passage on its second reading in the house of representatives of the General Assembly of North Carolina, there was no call of the ayes and noes, and the vote upon such reading was not recorded in the Journal of the House of Representatives, as required by the constitution of North Carolina.

9. That subsequent to the enactment of the last-named act, of the 20th day of February, 1879, the board of commissioners of Wilkes county ordered an election under the provisions of section 4 of said act, which, as the plaintiffs are advised, was null and void (a full transcript of all the proceedings of the board of commissioners of Wilkes county in relation to said election, and to the subscription of the capital stock of the Northwestern North Carolina Railroad Company, which it is claimed was authorized by said vote, being hereto attached, marked Exhibit "A," except that the names of judges of election are omitted, as well as the statement of the vote by townships. It is admitted that at said election a majority of the qualified voters of Wilkes county voted a ticket, whereon was written or printed the word "Railroad.") The plaintiffs are advised and believe that there was no authority for holding said election for the purpose of authorizing such subscription as held then other than that purporting to be granted by section 4, chapter 43 of the Laws of 1879, which, for the reason hereinbefore stated, was null and void.

10. That after said election was held, as aforesaid, the said Northwestern North Carolina Railroad Company abandoned its claim to demand a subscription from the plaintiff or the county of Wilkes, conceding that said election was held without authority; and that if authorized, the said railroad company had forfeited its right to demand that board of commissioners of Wilkes county should subscribe to its capital stock, by failure to comply with the conditions upon which said subscription was made.

11. That on the 8th day of October, 1888, a petition was presented

to the board of commissioners of the county of Wilkes, asking that another election be ordered, to pass upon the question whether said company should subscribe one hundred thousand dollars to the capital stock of the Northwestern North Carolina Railroad Company; and in response to said petition an election was accordingly ordered and held on the 6th day of November, 1888, at which election a majority of the qualified voters of Wilkes county voted tickets whereon was written or printed, "Subscription." A full transcript of all proceedings of the board of commissioners of Wilkes county, in relation to the authorizing and holding said election, and the declaration of the result, as well as the making of a subscription of one hundred thousand dollars in coupon bonds to the capital stock of said company, and the issue and delivery of said bonds to said company, is hereto attached, marked Exhibit "B." The plaintiffs admit that at the said election the majority of the qualified voters of Wilkes county cast their ballots in favor of the subscription of one hundred thousand dollars to the capital stock of said company. The plaintiffs are advised, informed and
16 believe that no authority had been granted in sections 1900 to 2000, both inclusive, of the Code of North Carolina; and that neither the county of Wilkes nor the citizens of said county had any pecuniary interest or interest in contemplation of law in the said railroad company at the time that said election was held; and plaintiffs are therefore advised, informed and believe that the said subscription of one hundred thousand dollars, purporting to have been made by the board of commissioners of Wilkes county, was unauthorized; and that the coupon bonds, amounting to one hundred thousand dollars, issued under the color of authority, claimed to be given by said sections of the Code and said election, are invalid, null and void.

12. That accordingly, as appears more fully in the orders embodied in Exhibit "B," hereto attached, in pursuance of a contract, bearing date October 1, 1888, the board of commissioners of Wilkes county caused the said bonds first thirty-three thousand dollars, according to the face value of the same, and subsequently the remaining sixty-seven thousand dollars, to be delivered to the president of said Northwestern North Carolina Railroad Company, reciting upon the face of said bonds that they were issued by virtue of an election held in accordance with the provisions of said sections of the Code of North Carolina; and since the issuing of said bonds, the commissioners of said county have annually levied a tax to meet the interest on the same as it accrued; and out of the money derived from said special levy, have caused the said interest to be paid, and have taken up the coupons attached to said bonds, said bonds were each (omitting the coupons attached) in form as set forth in a paper hereto attached, marked Exhibit No. 1.

13. That there is now, or ought to be, in the hands of the defendant, Clarence Call, as treasurer of said county, about — dollars, of the funds levied and collected for the purpose of paying the interest on said bonds; and that the said Call, as sheriff, has collected and has or ought to have turned over to himself as treasurer, the

moneys levied for the purpose of meeting the interest on said bonds as it may fall due.

14. That the defendant, Clarence Call, in his capacity as treasurer, has been in the habit of paying the interest on said bonds, and taking up the coupons as such interest fell due, without awaiting the orders or direction of the plaintiff board. That as plaintiffs are advised, informed and believe, the said Call recently communicated with some of the holders of the bonds and advised them to deliver their coupons and receive the interest from him, lest some proceeding might be instituted to enjoin its payment; and the plaintiffs are informed and believe that the said Call will continue to apply the funds given into his hands under said levy as sheriff, and turn over to himself in the capacity of treasurer, in payment of the interest on said bonds, unless restrained from doing so by the order of some court of competent jurists; the plaintiffs are advised, informed and believe that if the said Call, as treasurer, shall apply said moneys in his hands to the payment of said interest, although said bonds may be in contemplation of law, invalid, neither the said Call, nor the sureties on his official bond, as treasurer, can be held accountable for such application of said moneys, and therefore the plaintiffs will suffer irreparable damage, unless he shall be restrained from making said payments.

Wherefore, plaintiffs demand judgment:

1. That the said coupon bonds, amounting to one hundred thousand dollars, purporting to have been issued by virtue of a vote in favor of subscription by a majority of the qualified voters in Wilkes county, be declared invalid, null and void.

17 2. That defendant, Clarence Call, as *ex officio* treasurer of the county of Wilkes, be perpetually enjoined and restrained from paying any portion of the principal or interest on the said bonds issued by the board of commissioners of Wilkes county in payment of a subscription to the Northwestern North Carolina Railroad Company.

3. For such other and further relief as to the court may seem just.

4. For the costs of action.

(Signed) A. C. AVERY, *Attorney.*

C. C. Wright maketh oath before me, that the facts set forth in the foregoing affidavit or complaint, as of his own knowledge, are true; and those stated on information and belief he believes to be true.

(Signed) C. C. WRIGHT.

Sworn and subscribed before me, this the 31st day of December, 1897.

WILL P. RAGAN,
Notary Public.

EXHIBIT "A."

Whereas, a petition in accordance with law has been presented to us, asking that an election be ordered in the county of Wilkes on the 16th day of June, 1887, for the purpose of submitting to the people a proposition to subscribe one hundred thousand dollars to the capital stock of the Northwestern North Carolina railroad.

It is now ordered by us, the commissioners of Wilkes county, that an election be held on the said 16th day of June, 1887; and that a vote be taken in the county of Wilkes as to whether they will subscribe one hundred thousand dollars to the capital stock of the railroad aforesaid.

It is further ordered, in accordance with the proposition submitted to us by the Richmond and Danville Railroad Company for the extension of the Northwestern North Carolina railroad, that in case that a majority of the qualified voters of Wilkes county shall vote for said subscription, the commissioners shall issue bonds payable at the Wachovia National Bank of Winston, N. C., not less than ten, nor more than forty years (as to the commissioners shall seem best), after date said bonds bearing interest at six per cent. per annum, payable semi-annually, said bonds to be placed in the hands of a trustee, to be selected by the commissioners, and one-third of the bonds to be delivered to the railroad authorities when the road is constructed and the cars running to a point one-half of the distance between Wilkesboro, in Wilkes county, and Elkin, in Surry county; and the remaining two-thirds of the bonds, on the completion of the road and the running of the trains to the town of Wilkesboro (or a point just across the river), said bonds to be in denominations of not less than one thousand dollars nor more than five thousand dollars, interest to be paid on said bonds only from the time of their delivery.

It is further ordered, in accordance with the proposition submitted to the commissioners by the Richmond and Danville railroad, the railroad must commence work in the county of Wilkes in ninety days after the subscription is voted, and shall continue said work until said road shall be completed, which shall be in eighteen months thereafter; and upon the failure of said road to commence work in ninety days, to couple their line from Wilkesboro to Winston in eighteen months, as above set forth, then said subscription to said road is to be null and void, and the railroad company shall have no right to demand the bonds issued by the county, but the
18 trustee, in whose hands the bonds are, shall deliver them up to the county commissioners, to be cancelled upon the bonds being issued and delivered, the railroad company (the Northwestern North Carolina railroad) shall issue to the county of Wilkes certificate of stock to the amount of one hundred thousand dollars in the capital stock of the Northwestern North Carolina Railroad Company. The said election shall be held under the same provisions, laws and regulations as in the case of the regular State and county elections.

The above order is made at the request of the Richmond and Danville railroad, and with their full concurrence.

(Signed) R. B. GLENN,
Attorney for R. & D. R. R. Co.

Whereas, the Richmond and Danville Railroad Company has made a proposition to the board of county commissioners of Wilkes county to extend the Northwestern North Carolina railroad from Winston, N. C., to Wilkesboro, N. C., in the event that Wilkes county will subscribe one hundred thousand dollars to the capital stock of the said railroad company, to be paid in bonds of said county, according to agreement, filed in office of register of deeds, which appears of record on the minutes of this meeting of our board, one-third of said bonds to be delivered to said railroad company when said railroad is completed to a point half way between Elkin, N. C., and Wilkesboro, N. C., and the remaining two-thirds to be delivered to said railroad company when the railroad is completed to Wilkesboro, N. C., or the point just opposite said town, as expressed in said agreement.

Now, therefore, in pursuance of the agreement filed, and in accordance with the stipulation therein contained, we do hereby subscribe one hundred thousand dollars to the capital stock of said company, according to the stipulation of said agreement, subject to the will of the qualified voters of Wilkes county; and to ascertain the same of said voters, an election is hereby ordered to be held at the various precincts of Wilkes county, on the 16th day of June, 1887, at which election to be held under the laws and regulations of general county and State elections. Those favoring said subscription shall vote a written or printed ticket with the word "Railroad;" and those opposing, like ticket with the word "No railroad." And the following are appointed registrars and judges of said election in the various townships, and the register of deeds will issue notice to each.

Edwards township.—Wm. Groyn, S. J. Greenwood, L. D. Burcham, T. M. Byrd; J. I. Parks, register.

Trap Hill.—T. H. McCann, John A. Hall, R. B. Bryan, J. C. Lowe; Wesley Joines, register.

Walnut Grove.—J. N. Myers.

Mulberry.—C. N. Hunt, J. O. Owens, W. F. Absher, J. M. Harrold; D. M. Hall, register.

Union.—Thornton Staley, C. F. Vannoy, J. C. Wyatt, James M. Pinkerton; T. C. B. Whittington, register.

Reddie's River.—R. F. Wyatt, Jesse A. McNeill, C. W. Minton, Filmore Foster; H. C. Pennell, register.

Job's Cabin.—G. W. Walsh, John Thompson, Jobe Blackburn, Millard Watson; W. S. Hall, register.

Lewis' Fork.—M. C. Watts, L. E. Davis, J. M. Eller, C. L. Hamby; L. M. McGlamery, register.

Elk.—W. F. Barlow, Joel Triplett, J. T. Hamby, W. T. Land; F. H. West, register.

Beaver Creek.—T. L. Barlow, Thomas Phillips, Jr., James Pennell, Z. T. Ferguson; I. J. Walker, register.

Wilkesboro.—J. C. Hubbard, J. H. Ferguson, Thornton Brown, J. G. Duncan; S. J. Ginnings, register.

Bushy Mount.—J. W. Davis, W. O. Hendren, J. E. Hayes, Wesley Ball; H. Hayes, register.

19 Lovelace.—John Love, Hix Combs, Geo. Hayes, Wilson Moore; B. R. Transoe, register.

Somers.—M. F. Mitchell, John Warren, John Howard, James Combs; D. C. Jarvis, register.

New Castle.—W. W. Hampton, J. P. Wooten, J. T. Martin, William Walker; G. W. Sale, register.

Antioch.—J. C. Le Grand, S. E. Chapel, W. J. Kinyoun, J. E. Martin; Enoch Staley, register.

Fishing Creek.—E. F. Anderson, W. C. Garner, J. A. Glass, Samuel Miller; W. B. Transoe, register.

Rock Creek.—J. F. Parks, R. M. Johnson, J. C. Henderson, D. C. Woodruff; J. W. Felts, register.

Ordered by the board, that the registrars and judges of said election meet at the voting precincts of their respective townships on Saturday before said election and revise the registration books, and make report of the same to the board.

Ordered that the clerk of the board advertise the election of railroad, to be held on the 16th day of June, 1887.

Commissioners' court, June 16, 1897.

Telegram from A. B. Andrews to R. B. Glenn, attorney for Richmond and Danville Railroad Company, as follows:

RALEIGH, *June* 1, 1887.

Received at Winston June 1st.

To R. B. Glenn:

I learn that it has been said by some parties in Wilkes county that the proposition that you made as our attorney, to extend the Northwestern North Carolina railroad, was not binding on us, as it was made by you as attorney. I hereby confirm your action, and the proposition is binding on the company.

A. B. ANDREWS.

Abstract of notes cast at an election held for ratification or rejection for the purpose to subscribe one hundred thousand dollars to the capital stock of the Northwestern North Carolina railroad, held at the different precincts in Wilkes county on the 16th June, 1897, resulted as follows:

Townships.	Registered votes.	Railroad.	No rail-road.	Against subscrip-tion.
Edwards	415	369	1	0
Trap Hill	342	285	0	0
Walnut Grove	222	191	0	0
Rock Creek	226	211	0	0
Mulberry	336	325	0	0
Union	162	109	1	0
Reddie's River	259	246	0	0
Job's Cabin	130	66	5	0
Lewis' Fork	177	114	8	0
Elk	158	3	37	0
Beaver Creek	152	38	7	0
Wilkesboro	338	256	0	1
Bushy Mount	103	97	0	0
Fishing Creek	113	103	0	0
Lovelace	119	90	0	0
Somers	147	109	0	0
New Castle	218	169	0	0
Antioch	123	115	0	0
Total	3,738	2,895	59	1

NORTH CAROLINA, }
Wilkes County. }

The board of county canvassers for said county, having canvassed and judicially determined the original returns of the election in the several precincts in the county, June 16, 1887, on the question of subscribing one hundred thousand dollars to the capital stock of the Northwestern North Carolina Railroad Company, I do hereby certify, as chairman of said board, that it appears to be three thousand seven hundred and thirty-eight registered voters of said county, and that two thousand eight hundred and ninety-five votes cast in favor of "Railroad" and fifty-nine votes cast "No railroad," and one vote cast against subscription; and as chairman of said board of canvassers do declare that a majority of the qualified voters having voted in favor of said subscription, that the same has been ratified by the voters of said county.

June 18, 1887.

(Signed) L. D. BURCHAM,
Chm. Board of Co. Canvassers.

STATE OF NORTH CAROLINA, }
Wilkes County. }

Commissioners' Court, July Term, 1887.

Whereas, an election was duly held in Wilkes county on the 16th day of June, 1887, in accordance with an order previously made by the board of county commissioners, for the purpose of submitting to the qualified voters of Wilkes county a proposition to subscribe one hundred thousand dollars to the capital stock of the Northwestern North Carolina Railroad Company; and whereas, it appearing to us from the returns of the election (held in the county at the time aforesaid), that the majority of the qualified voters of Wilkes county voted in favor of the railroad, which vote was duly canvassed and adjudged carried by the board of county canvassers, and the same properly reported to us. And it appearing to us that a majority of the qualified voters were in favor of said proposition:

Now, therefore, we, the board of county commissioners of Wilkes county, by authority of the power invested in us by law, do hereby subscribe on our books to the capital stock of the Northwestern North Carolina Railroad Company, the sum of one hundred thousand dollars, under the limitations and conditions as contained in the proposition of the company. And do hereby appoint, empower and commission W. H. H. Cowles, of Wilkes county, as our legal and authorized agent and proxy for us, and in our stead, and for the county of Wilkes, to subscribe on the books of the Northwestern North Carolina Railroad Company the said sum of one hundred thousand dollars, to be paid on the condition of the completion of said road, as expressed in the proposition of the railroad company, as hereinafter set forth.

We further order that bonds with coupons in sums not less than one thousand dollars nor more than five thousand dollars, payable not less than ten nor more than forty years after date (the amount of the bonds and the time the are to run to be hereafter agreed upon between us and the railroad company), with interest at six per cent., payable semi-annually (the bonds to be on interest only from time of their delivery), — prepared to be issued and signed by us.

We further order and adjudge Jesse T. Ferguson be appointed as trustee to receive said bonds when issued, and to hold the same in trust, and to deliver one-third of said bonds to the railroad authorities when the railroad is completed and the cars running to a point half way between Elkin, in Surry county, and Wilkesboro, in Wilkes county, and the other two-thirds of the bonds to be delivered when the railroad is completed and the cars running to Wilkesboro or a point just across the river and opposite said town.

And in case of a failure of the Richmond and Danville Railroad Company to complete the Northwestern North Carolina railroad, as heretofore agreed upon between them and the county of Wilkes, then said trustee must surrender up all the bonds in his hands to us to be cancelled.

It is further ordered, that for the purpose of meeting the interest

on said bonds and the principal when it falls due, the county
21 commissioners shall have power each year to levy and collect a sufficient amount of taxes for the purpose required.

It is further ordered, that before the trustee shall deliver one-third of the bonds, the Northwestern North Carolina Railroad Company shall issue to the county of Wilkes thirty-three and one-third thousand dollars' worth of stock in their railroad; and when the other two-thirds of the bonds are delivered, the said railroad company shall issue sixty-six and two-thirds thousand dollars' worth of stock to said county.

RUFUS W. COLVARD,
Chairman Board of Commissioners.
J. A. COOPER,
County Commissioner.
J. S. HOLBROOK,
County Commissioner.

Ordered that the foregoing be entered upon the minutes of Wilkes county, at July term, 1887.

R. W. COLVARD,
Chairman Board of Commissioners.

Commissioners' Court, August 1, 1887.

The foregoing minutes of last meeting read and approved.

R. W. COLVARD,
Chairman Board of Commissioners.
J. A. COOPER,
County Commissioner.
J. S. HOLBROOK,
County Commissioner.

EXHIBIT "B."

Whereas, a petition in accordance with law has been presented us, asking that an election be ordered in the county of Wilkes on the 6th day of November, 1888, for the purpose of submitting to the people the proposition to subscribe one hundred thousand dollars, payable in Wilkes County bonds, to the capital stock of the Northwestern North Carolina railroad, it is now ordered by us, the commissioners of Wilkes county, that an election be held the 6th day of November, 1888, and that a vote be taken at the different precincts in the county of Wilkes as to whether they will subscribe one hundred thousand dollars to the capital stock of the railroad aforesaid. Those favoring said subscription voting a written or printed ticket with the word "Subscription." Those opposed, "No subscription."

It is further ordered, in accordance with the proposition submitted to us by the Northwestern North Carolina Railroad Company for the extension of the Northwestern North Carolina railroad, that in case that a majority of the qualified voters of Wilkes county shall vote for said subscription the commissioners shall issue bonds, pay-

able to the Wachovia National Bank of Winston, N. C., to run not less than ten nor more than forty years (as the commissioners shall deem best); after date said bonds bearing interest at six per cent. per annum, payable semi-annually, said bonds to be placed in the hands of a trustee, to be selected by the commissioners, and one-third of the bonds to be delivered to the railroad authorities when the railroad is constructed and the cars running to a point one-half the distance between the Surry County line and Wilkesboro, in the county of Wilkes. And the remaining sixty-seven thousand dollars on completion of the road and the running of the train to the town of Wilkesboro or a point across the river, within one mile of the court-house; said bonds to be in denominations of one thousand dollars each, interest to be paid on said bonds only from the time of their delivery.

22 It is further ordered, in accordance with the proposition submitted to the commissioners by the Northwestern North Carolina railroad, that the railroad company shall continue work on said road until it shall have been completed, which shall be by the 16th of September, 1890. And upon the failure of the said road to complete their line from Winston to Wilkesboro, as herein provided, then said subscription unearned shall be null and void, and the railroad company shall have no right to demand the unearned bonds issued by the county, but the trustee, in whose hands the bonds are, shall deliver them up to the county commissioners to be cancelled. And the said railroad company shall issue and deliver to the county of Wilkes certificates of stock in the Northwestern North Carolina railroad to the amount of bonds received at the time of the delivery of bonds to said company. The said election shall be held under the same provisions, laws and regulations as in the case of a regular State or county election. The above order is made at the request of the Northwestern North Carolina Railroad Company, and with their full concurrence.

Whereas, the Northwestern North Carolina Railroad Company have presented to the board of county commissioners of Wilkes county a petition signed by the requisite numbers of citizens, asking the board of county commissioners of Wilkes county to subscribe one hundred thousand dollars to the capital stock of the Northwestern North Carolina Railroad Company; and at their regular meeting of said county commissioners of Wilkes county, held at the court-house in Wilkesboro, N. C., on the first Monday in October, 1888, and upon consideration of said petition, it is ordered by the board that one hundred thousand dollars be subscribed to said Northwestern North Carolina Railroad Company, subject, however, to be ratified by the qualified voters of Wilkes county, at an election to be held on the 6th day of November, 1888. And the Northwestern North Carolina Railroad Company, through A. B. Andrews, president of said company, covenants and agrees, to and with the said board of county commissioners of Wilkes county, to wit: R. W. Colvard, chairman; J. A. Cooper and J. S. Holbrook, that in case said Northwestern North Carolina Railroad Company do not comply with the terms of a certain order

made at this court, to wit, that said railroad company agrees to construct and build a railroad from Winston, N. C., to Wilkesboro, N. C., and to have said road in running operation, properly equipped to Wilkesboro, N. C., or to within one mile of the court-house, across the river, by the 16th day of September, 1890; that the said Northwestern North Carolina Railroad Company will forfeit and pay to said commissioners for the use of Wilkes county, the sum of ten thousand dollars, provided that said subscription of one hundred thousand dollars shall be legally voted and subscribed to the capital stock of said railroad company. The ten-thousand-dollars forfeiture is to be placed in the Wachovia national bank, of Winston, N. C., to be held in trust for the use of Wilkes county, N. C., and to be turned over to the said county commissioners of Wilkes county, N. C., in case said Northwestern North Carolina Railroad Company shall fail to complete said railroad, as hereinbefore stated. In case the depot be situated on the east side of Reddie's river, the railroad company obligates themselves to erect at their expense a good, substantial bridge over Reddie's river, for the purpose of transporting teams, wagons, etc., and the said bridge to be built whenever the commissioners designate. The county commissioners obligate themselves to furnish a good public road to and from said bridge
23 to the depot. The said bridge to be turned over to the county and be kept forever afterwards as a public bridge; said bridge to be built within sixty days from the completion of the railroad to the point intended as a depot. It is expressly understood and agreed between the said county commissioners and the said railroad company, that if a majority of the qualified voters of Wilkes county vote for the subscription of one hundred thousand dollars, this day ordered by said commissioners, and this one hundred thousand dollars, as provided for in this election, to be held November 6, 1888, is subscribed by the voters, then the obligations heretofore entered into with the Richmond and Danville Railroad Company shall be null and void, otherwise, it shall remain in full force till the expiration of time specified in the first agreement, made on May 3, 1887, with the Richmond and Danville Railroad Company.

R. W. COLVARD,
Chairman Board of Commissioners.
J. A. COOPER, *County Commissioner.*
J. S. HOLBROOK,
County Commissioner.
NORTHWESTERN N. C. R. R. CO.,
By A. B. ANDREWS, *President.*

Commissioners' Court, October Term, 1888.

The following were appointed judges of the railroad election, to be held the first Tuesday in November, 1888:

Bushy Mount.—B. F. Tedder, Burton Queen.
Lovelace.—R. V. Wright, J. F. Anderson.
Somers.—J. F. Mitchell, W. A. Souther.
New Castle.—John Martin, N. W. Brown.

Antioch.—Stephen Pardew, E. O. Martin.
Fishing Creek.—E. F. Anderson, Clinton Foushee.
Rock Creek.—Thomas Myers, R. M. Johnson.
Edwards.—J. Q. Sparks, L. D. Burcham.
Trap Hill.—J. A. Hall, Monroe Bryan.
Walnut Cove.—Aaron Triplett, W. R. Gambill.
Mulberry.—L. A. Dancy, Harrison Church.
Union.—C. F. Vannoy, J. M. Phipps.
Reddie's River.—J. A. McLean, William E. Bumgarner.
Job's Cabin.—G. W. Walsh, Berry McMillan.
Lewis' Fork.—Francis Eller, W. A. McGlamery.
Beaver Creek.—I. J. Walker, Nathan Horton.
Elk.—J. C. Laud, A. Lippford.
Wilkesboro.—W. A. Foster, J. G. Privette.

NORTH CAROLINA, }
Wilkes County. }

It appearing to the satisfaction of the board of county commissioners of Wilkes county, according to the board of county canvassers, that there are four thousand one hundred and eighty-two qualified voters in Wilkes county, and that at the election ordered by us to be held on the 6th day of November, 1888, to subscribe "one hundred thousand dollars" to the capital stock of the Northwestern North Carolina Railroad Company, two thousand seven hundred and sixty-two votes were cast for said propositions, according to the conditions, stipulation and agreements contained in said proposition; and this being a majority of the qualified voters in Wilkes county:

Now, therefore, it is hereby adjudged by the board that said proposition is properly ratified according to said contracts and agreements heretofore entered into between said railroad company and this board.

APRIL 1, 1889.

Ordered by the board, that the one hundred thousand
24 dollars subscribed to the Northwestern North Carolina Railroad Company at October term, 1888, at the commissioners' court of Wilkes county, and ratified by the voters of Wilkes county at an election ordered by and held November the 6th, 1888, be paid in bonds of the denominations of one thousand dollars each, bearing interest, payable semi-annually, at the Wachovia National Bank of Winston, N. C., from the time of their delivery, as set forth in the agreement, entered into between the commissioners of Wilkes county and A. B. Andrews, president of the Northwestern North Carolina Railroad Company, at October meeting, 1888, the principal of which bonds shall become due and payable as follows, to wit, three thousand dollars thereof shall become due and payable eleven years after their delivery to the said Northwestern North Carolina Railroad Company, and five thousand thereof become due and payable each and every year thereof, till the thirtieth year, there shall be paid the seven thousand dollars still remaining due.

It is further ordered by the board, that R. W. Colvard is hereby authorized and empowered to contract with any company he may deem best, to have properly lithographed the bonds which are to issue, with coupons attached, providing for the payment of said interest semi-annually, as set forth in the contract, made at October term, 1888, of this court.

Commissioners' Court, May 6, 1889.

Ordered, that George H. Brown, cashier of the First National Bank of Statesville, N. C., be appointed trustee, to hold the one hundred thousand dollars of the Wilkes County bonds, subscribed to the Northwestern North Carolina railroad as provided in said order of election, which bonds the said trustee is to hold till an order — signed by the board of county commissioners of Wilkes — to turn over the said bonds to the said railroad authorities.

Commissioners' Court, June 3, 1889.

The Richmond and Danville Railroad Company, through W. W. Barber, demanded that the commissioners of Wilkes county issue bonds to the amount of one hundred thousand dollars, subscribed to the Northwestern North Carolina Railroad Company, and asked that a trustee be appointed, as provided for in the agreement, and the bonds placed in his hands, as therein specified; and if the county commissioners select an individual trustee and place the bonds in his hands, without taking from him a sufficient obligation for the faithful performance of his trust, as per the contract, they do so against the protest of said railroad company.

Ordered, that J. T. Ferguson, of Wilkesboro, be appointed trustee to hold the bonds to the amount of one hundred thousand dollars, subscribed by Wilkes county to the Northwestern North Carolina Railroad Company; and that the said J. T. Ferguson shall file at the next meeting of this board a bond in the sum of one hundred thousand dollars for the forthcoming of the bonds when demanded by the commissioners or when directed to be turned over under the contract, and for the faithful performance of his trust.

JUNE 2, 1890.

Whereas, on the 1st day of October, 1888, the board of commissioners of Wilkes county entered into a contract with the Northwestern North Carolina Railroad Com*m*pany to issue one hundred thousand dollars of county bonds to aid in the construction and extension of said Northwestern North Carolina railroad; and, whereas, the further condition of said contract provides that "one-third" of the bonds are to be delivered to said railroad authorities when the railroad is constructed and the cars running to a point one-
25 half the distance between the Surry County line and Wilkesboro, in the county of Wilkes; and it appearing to us by the affidavit of A. B. Andrews, president of the Northwestern North Carolina Railroad Company, and C. F. Botton, chief engineer of said

company, that the above condition and provision has been complied with, and the board here finding as a fact that the same is true:

It is now ordered by the board of commissioners that thirty-three thousand dollars of bonds, face value, numbered from one to thirty-three (1 to 33), inclusive, be signed and delivered at once to said A. B. Andrews, president of the said Northwestern North Carolina Railroad Company, and take his receipt therefor.

It is understood and agreed here between the parties to the contract, all being present, that the interest on the bonds shall run only from the 1st day of June, 1890, but *if* it is further agreed between the parties that before the delivery of said bonds that the board of commissioners may cut off from the first eleven bonds the coupons due October 1, 1890, leaving the October 1, 1890, coupons on the other twenty-two bonds, which will be the same as if the fractional part of the amount due on all the October coupons, 1890, were paid by the county at maturity.

And it is further ordered by the board of commissioners of Wilkes county, that when said railroad shall be completed to Wilkesboro, or to a point within one mile of the court-house, as stipulated in the agreement, entered into between the board of commissioners of Wilkes county and the Northwestern North Carolina Railroad Company, at the meeting of said board on the 1st day of October, 1888, as aforesaid, and when the proper affidavits shall be filed as to said completion, according to the contract, then the chairman of this board is hereby directed to execute and sign the remaining sixty-seven thousand dollars of bonds, and deliver the same to A. B. Andrews, president of said Northwestern North Carolina Railroad Company, and take his receipt for the same; and to receive from said A. B. Andrews, president, as aforesaid, the certificate of stock for Wilkes county.

It is further ordered by the board, that R. W. Colvard, chairman of this board, is authorized and empowered to agree with A. B. Andrews, president of the Northwestern North Carolina Railroad Company, as to what number of coupons shall be detached in case said bonds are delivered at a time other than when said coupons are due, so that the matter, of equitable, adjusting the interest on said bonds, may be arranged — the county of Wilkes, and said railroad authorities' said interest to run only from said completion of the railroad.

It appearing to the satisfaction of the board of commissioners of Wilkes county, that the contract between said commissioners and A. B. Andrews, president of the Northwestern North Carolina railroad, entered into on the first Monday in October, 1888, as shown by the minutes of said commissioners, having been fully complied with, it is therefore ordered that the president of the Wachovia National Bank of Winston, N. C., turn over to said A. B. Andrews the forfeit bond for ten thousand dollars, in his possession as a forfeiture in case of failure of said A. B. Andrews to comply with said contract.

NORTH CAROLINA, }
Wilkes County. }

I, E. M. Blackburn, register of deeds for Wilkes county, do hereby certify that the foregoing is a true copy of the proceedings of the county commissioners of Wilkes county in reference to the
26 Northwestern North Carolina Railroad Company, from May 3d, 1888, to December 31st, 1890, as appears on record in my office.

This February 14, 1898.

(Signed) E. M. BLACKBURN,
Register of Deeds.

EXHIBIT No. 1.

Six Per Cent. Bond.

(Copy.)

The county of Wilkes, State of North Carolina, is indebted to the bearer in the sum of one thousand dollars lawful money of the United States, payable on the first day of October, 1913, with interest thereon from the first day of October, A. D. 1889, at six per cent. per annum, payable on the first days of April and October in each year, at the Wachovia National Bank of Winston, North Carolina, on presentation and surrender of the respective coupons hereto attached, as they severally become due and payable.

This bond is one of a series on one hundred bonds of the denomination of one thousand dollars each, issued by authority of an act of the General Assembly of North Carolina, ratified the 20th day of February, A. D. 1879, entitled "An act to amend the charter of the Northwestern North Carolina railroad for the construction of a second division from the towns of Winston and Salem, in Forsyth county, up the Yadkin valley, by Wilkesboro, to Patterson factory, Caldwell county," and authorized by a vote of a majority of the qualified voters of Wilkes county, by an election regularly held for that purpose, on the 6th day of November, A. D. 1889; and by an order of the board of commissioners of Wilkes county, made on the first day of April, A. D. 1889. This series of bonds is issued to pay the subscription of one hundred thousand dollars, made to the capital stock of the Northwestern North Carolina Railroad Company by said county of Wilkes.

In witness whereof, the chairman of the board of county commissioners and the clerk of the said board have hereunto subscribed their names, and the said clerk has affixed the seal of said board of commissioners, this 1st day of October, A. D. 1889.

(Signed) R. W. COLVARD,
Ch'm'n Board of Commissioners of Wilkes Co.

(Signed) J. M. ADAMS,
[SEAL.] *Clerk Board Commissioners Wilkes Co.*

Answer.

The defendant, Clarence Call, sheriff of Wilkes county, answering the complaint of the plaintiffs, says:

I. That the allegations of paragraph one of the complaint are true.

II. That the allegations of paragraph two of the complaint are true.

III. That the allegations of paragraph three of the complaint are true.

IV. That the allegations of paragraph four of the complaint are true.

V. That the allegations of paragraph five of the complaint are untrue, as he is advised.

VI. That the allegations of paragraph six of the complaint are untrue, in so far as it is alleged, that after the passage of the laws therein referred to, no county in the State nor the citizens of any county in the State, had any pecuniary interest in said Northwestern North Carolina Railroad Company, but, on the contrary, the county of Forsyth, and the citizens of the county of Forsyth and of other counties in the State, had stock in said Northwestern
27 North Carolina Railroad Company, until the year 1895, when the road was sold to the Southern Railway Company.

VII. That the allegation that the General Assembly of North Carolina, at its session of 1872 and 1873, amended the charter of the Northwestern North Carolina Railroad Company is true, and it may be true, except as hereinafter stated, that no amendment of the charter of said company, prior to February 20th, 1879, granted authority to any county to subscribe stock to said road; but, the allegation that prior to February 20th, 1879, the county of Wilkes had no authority to subscribe stock to said company is, as this defendant is advised, untrue, and it is also untrue that this company had no authority to build a railroad into the county of Wilkes.

VIII. That as to the allegations of article eight of the complaint, the defendant admits that the act of 1879 was passed; and he admits that the ayes and nays on the second reading in the house of representatives do not appear as having been entered on the journal of the house, according to the published volume of the journal, but this defendant has never seen the original journal, and he demands proof of said allegation.

IX. That as to the allegations of paragraph nine of the complaint, the defendant admits that an election was held, but the defendant denies that said election was held without authority, except, that said vote, by an oversight, was taken upon a contract with the Richmond and Danville Railroad Company instead of the Northwestern North Carolina Railroad Company; and said election was, for that reason abandoned, and a new election ordered.

X. That as to the allegations of paragraph ten of the complaint, the defendant admits that the results of the election were abandoned for the reasons set forth in paragraph nine of this answer.

XI. That as to the allegations of paragraph eleven of the complaint, the defendant admits that the election was held, and that a majority of the qualified voters of the county cast their ballots in favor of the subscription of one hundred thousand dollars to the said Northwestern North Carolina Railroad Company, but the defendant cannot say whether Exhibit "B" is a full transcript of the proceedings or not. That the other allegations in said paragraph are untrue, but the defendant avers that the election was legally held; that the board of commissioners were fully authorized, as he is advised, to order said election, and to make the subscription to the road, and to issue the bonds, under the original charter of the road, passed by the convention of North Carolina in March, 1868; and by virtue of authority conferred by sections 1996 and 2000, inclusive, of the Code of North Carolina.

XII. That as to allegations in paragraph twelve of the complaint, it is true that the board of commissioners issued the one hundred thousand dollars of bonds, and have levied a tax annually, to pay the interest on said bonds.

XIII. That it is true that the defendant has some funds on hand, as treasurer, to be applied on coupons that fall due in April and October, 1897, and money is in his hands to be applied in payment of coupons yet to fall due.

XIV. That it is true that said Call has been in the habit of paying said coupons, without any special order of said plaintiff board, but these payments were made by the consent and direction of the plaintiff board, and it was well understood between the said board and this defendant that these coupons should be paid by this defendant whenever he had the funds in hand.

28 That the plaintiff board levied a special tax to pay certain coupons for 1893 and 1894, which long remained unpaid, and certain bondholders, through their agent or agents had many times presented their coupons for payment, and this defendant did agree with said agent or agents to notify them when he should be in funds to pay the same; and this defendant did so notify said agent or agents, as soon as he came into possession of sufficient funds, to pay off these coupons, amounting to two thousand one hundred dollars, and this defendant did so pay them off. That this defendant has made no payments of coupons since this restraining order was served on him.

And for further defence, the defendant says:

I. That the Northwestern North Carolina Railroad Company was chartered by an ordinance of the constitutional convention of North Carolina; that said ordinance was ratified the 9th day of March, 1868, and was published as chapter 17 of the ordinances of said convention, and a copy of said ordinance is hereto attached and marked Exhibit "A." That section two of said ordinance reads as follows: "Be it further ordained, that the capital stock of said company may be created by subscriptions on the part of individuals, corporations and counties, in shares of one hundred dollars each." That section twelve of said ordinance reads as follows: "Be it further ordained, that the stockholders of said company may pay the stock subscribed

to them, either in money, labor or material for constructing said road, as the board of directors may determine, and that all counties and towns subscribing stock to said company shall do so in the same manner and under the same rules, regulations and restrictions as are set forth and prescribed in the act incorporating the North Carolina and Atlantic (Atlantic and North Carolina) Railroad Company for the government of such towns and counties as now allowed to subscribe to the capital stock of said company." That section thirteen of said ordinance reads as follows: "Be it further ordained, that the company shall have power to construct branches of said railroad, one of which shall run from said towns of Winston and Salem by way of Mount Airy, in Surry county, to the line of the State of Virginia." That the provisions setting forth the manner in which the towns and counties shall subscribe to the stock of the Atlantic and North Carolina Railroad Company, are contained in sections 33 to 37, inclusive, of chapter 136 of the Laws of the General Assembly, Session of 1852, a copy of which sections is hereto attached and marked Exhibit "B."

II. That by virtue of said ordinance, the Northwestern North Carolina Railroad Company was organized on April 17, 1868. That in April, 1868, the county of Forsyth, by virtue of the provisions of said ordinance, voted a subscription of one hundred thousand dollars to said railroad company, and said county issued bonds in payment of said subscriptions, the validity of which bonds has been upheld by the supreme court of North Carolina in the cases of Hill *v.* Commissioners of Forsyth County, 67th N. C., page 367, and of Belo *v.* Commissioners of Forsyth County, 76 N. C., 489.

III. That the work of grading the road-bed of said railroad began under the supervision of Edward Belo, now dead, the president of said railroad company in the month of October, 1868, and continued all through the winter of 1868 and 1869; and by April 10th, 1869, considerable grading had been done on said railroad, seventy-five to one hundred and fifty hands having been employed during the winter on said work: and this defendant is advised that the Northwestern North Carolina railroad was an unfinished road on said 10th day of April, 1869 (1869).

29 IV. That the county of Forsyth had stock in said railroad company to the extent of seventy-five thousand dollars, and many citizens of the county of Forsyth, Guilford and other counties in the State held stock in said company, from or soon after the organization of the company in 1868 to the year 1895.

V. That sections 1996 to 2000, inclusive, of the Code were first enacted on the 10th day of April, 1869, and were intended, as set forth in the title to the act, "to authorize the several counties of the State to take stock in railroad companies," the act being published as chapter 171 of the Laws of 1868 and 1869. That this act was brought forward in Battle's Revisal as sections 66 to 70, inclusive, of chapter 99, and was also brought forward in the Code of North Carolina, ratified as one act, on March 2d, 1883.

VI. That this defendant is advised that the bonds of one hundred thousand dollars, issued by the board of commissioners of Wilkes

county, as aforesaid, were legally issued and were authorized by the provisions of the original charter, granted by the convention on March 9th, 1868, before the ratification of the present constitution, and that the power being given by said ordinance of said convention, the method of making said subscription is pointed out in sections 1996 to 2000, inclusive of the Code, the board of commissioners of said county of Wilkes being the successors in office of the board of justices and of the county court, existing before the adoption of the constitution in 1868.

That the election held on November 6th, 1888, was held in accordance with the provisions of the sections 1996 to 2000, inclusive, of the Code of North Carolina. That the defendant is informed that none of the bonds of the county of Wilkes, issued in aid of the completion of said Northwestern North Carolina railroad, are now held by said railroad company, but all of them are held by *bona fide* holders for value; and this defendant is advised that any irregularities in the method of holding said election, if any such did exist, would not in any way affect the validity of said bonds in the hands of *bona fide* purchasers for value.

VII. That the defendant is further advised that said board of commissioners was authorized to issue said bonds by virtue of the provisions of sections 1996 to 2000, inclusive, of the Code of North Carolina, which sections were first enacted on April 10, 1869. That the Northwestern North Carolina railroad was an unfinished or incomplete road on April 10, 1869, was such an unfinished and incomplete road on January 1, 1874, when the provisions in Battle's Revisal took effect; and was such an unfinished and incomplete road on November 1, 1883, the date on which the provisions of the Code of North Carolina took effect.

VIII. That the construction of the Northwestern North Carolina railroad from Greensboro, N. C., to Winston and Salem, N. C., was finished about the year 1872, and has since been operated as a railroad line, and freight and passenger trains have been run over the line of the same between Greensboro and Winston and Salem, a distance of some twenty-nine miles. That in 1887 the work of constructing the road and of grading the road-bed between Winston and Wilkesboro, in Wilkes county, was begun, and the said work of grading the said road-bed was continued until the work was completed, in the year 1890. That on the 6th day of November, 1888, the said railroad between the towns of Winston and Wilkesboro was an unfinished railroad, the work of constructing the said railroad between said towns having not been finished, but the same being in an unfinished condition, many miles of the line between Winston and Wilkesboro being then unfinished.

30 IX. That the General Assembly of North Carolina, at its session in the year 1881, passed an act, which is published as chapter — of said laws, which authorizes the said Northwestern North Carolina Railroad Company to extend its road and to build branches; and said act provided for subscriptions by counties, cities and towns and townships, a copy of which act is hereto attached and marked Exhibit "C."

X. That the General Assembly of North Carolina, at its special session in 1868, passed an act ratifying the charter of the said railroad, published as act — of said acts, a copy of which is hereto attached and marked Exhibit "D," which is specially pleaded by this defendant.

Wherefore, the defendant prays that the restraining order heretofore granted be dissolved; that this action be dismissed, and the defendant recover the costs, and for such other and further relief as he may be entitled to.

(Signed) CLARENCE CALL,
Sheriff and Treasurer.

Clarence Call, being duly sworn, says: That the contents of this answer are true of his own knowledge, except as to matters stated on information and belief, and these he believes to be true.

(Signed) CLARENCE CALL.

Sworn to and subscribed before me, this January 28th, 1898.

(Signed) H. R. STARBUCK,
Judge Superior Court.

EXHIBIT "A."

CHAPTER XVII.

An ordinance to incorporate the North Carolina Railroad Company.

SECTION 1. Be it ordained by the people of North Carolina in convention assembled, and it is hereby ordained by authority of the same: That for the purpose of constructing a railroad of one or more tracks, from some point on the North Carolina railroad, between the town of Greensboro, in Guilford county, and the town of Lexington, in Davidson county, running by way of Salem and Winston, in Forsyth county, to some point in the northwestern boundary line of the State, to be hereafter determined, a company is hereby incorporated under the name and style of the Northwestern North Carolina Railroad Company, with a capital stock of two millions of dollars, which shall have a corporate existence as a body politic, for the space of ninety-nine years, and by that name may sue and be sued, plead and be impleaded, in any court of law and equity in the State of North Carolina; and may have and use a common seal, and shall be capable in law and equity of purchasing, holding, leasing and conveying estates, real and personal, and mixed, and acquiring the same by gift or devise, so far as may be necessary for the objects herein contemplated, and no further; and said company may enjoy all other rights and immunities which other corporate bodies may lawfully exercise, and may make all necessary by-laws and regulations for its government not inconsistent with the constitution and laws of the State of North Carolina and of the United States.

31 SEC. 2. Be it further ordained, That the capital stock of said company may be created by subscriptions on the part

of individuals, corporations and counties, in shares of one hundred dollars.

SEC. 3. Be it further ordained, That books of subscription to the capital stock of said company shall be opened by the following commissioners, to wit: I. G. Lash, J. A. Vogler, H. W. Fries, in the town of Salem; and Thomas J. Wilson, Joseph Masten, R. A. Wilson, in the town of Winston, and by such other persons and in such other places as the aforesaid commissioners may direct; and that ten days' notice of the opening of said books shall be given in one or more newspapers of this State; and, furthermore, that the said commissioners, or any four of them, may, at any time after said books have been kept open for the space of thirty days, and the sum of thirty thousand dollars has been subscribed to the capital stock of said company and five per cent. paid thereon, have power to call together the subscribers to said stock for the purpose of completing the organization of said company; and the said subscribers shall be and are hereby declared incorporated into a company by the name and style of the Northwestern North Carolina Railroad Company; and the said company may, from time to time, receive other subscriptions to its capital stock as it may deem proper.

SEC. 4. Be it further ordained, That the company may hold annual meetings of its stockholders, and oftener if necessary, and at its organization and the annual meetings subsequent thereto, ten directors shall be elected to hold office for one year, or until their successors shall be elected; and any of said meetings shall have power to make or alter the by-laws of the company: Provided, that in all such meetings of the stockholders a majority of all the stock subscribed shall be represented in person or by proxy, which proxy shall be verified in the manner prescribed by the by-laws of the company; and each share thus represented shall be entitled to one vote on all questions; and that it shall be the duty of the directors of the company to elect one of their own number as president of said company, and to fill all vacancies in their board.

SEC. 5. Be it further ordained, That after the organization of said company and the election of the president and other necessary officers, the officers so elected shall proceed, under the advice of the directors, to locate the eastern terminus of the Northwestern North Carolina railroad, and shall proceed to construct said road, with one or more tracks, as speedily as practicable, in sections of five miles each, to the towns of Winston and Salem, in Forsyth county, which portion of said railroad, when completed, shall constitute its first division: Provided, that if the distance from the nearest section to the towns of Salem and Winston be less than five miles, the same shall be considered a section.

SEC. 6. Be it further ordained, That said company shall have the same power to call for and enforce the payment of stock subscribed, as was heretofore granted to the North Carolina Railroad Company, by their charter of incorporation; and shall have power to condemn land for the use of the company, when a contract of purchase cannot be made with the owner thereof, to the same extent and in the same manner and under the same rules, regulations and restrictions as

the said North Carolina Railroad Company were authorized to do by ther act of incorporation.,

SEC. 7. Be it further ordained, That all contracts made and entered into by the president or superintendent of the company, whether with or without seal, shall be binding upon the company; and the president shall, under the instruction of the board of
32 directors, issue certificates of stock to the stockholders, which shall be transferable in the manner prescribed by the by-laws of the company.

SEC. 8. Be it further ordained, That whenever the president and chief engineer of said company shall certify to the governor of the State that the grading of any of the sections of said road, as mentioned in section 5 of this ordinance, is completed and ready for the superstructure, he shall direct the public treasurer of the State to loan in behalf of the State to the said company the sum of fifty thousand dollars in coupon bonds; and in like manner the governor will direct similar loans to be made to the company, upon the completion of the grading of each and every section, until the first division is graded entire; and said company shall set aside the receipts of the road over and above its annual expenses, as a sinking fund to pay the said debts and interest, the whole amount of said debt and interest to be paid before the said company shall order any dividends on the stock of the company; and that said sinking fund so produced shall be semi-annually paid into the public treasury.

SEC. 9. Be it further ordained, That no part of said loan or bonds shall be delivered to said company until the president and directors thereof shall execute and deliver to the governor of the State a mortgage on the entire road and its property, conditioned to save the State harmless against the loss of both principal and interest of said loan.

SEC. 10. Be it further ordained, That the coupon bonds loaned, as aforesaid, shall be signed by the governor, countersigned by the treasurer and sealed with "the great seal of the State," bearing six per cent. interest, the principal payable at the end of thirty years from the date thereof, and the coupons for the interest payable semi-annually in such form as the public treasurer may direct.

SEC. 11. Be it further ordained, That the company may have the exclusive right of transporting persons and freight upon said road at such rates of charges as the board of directors may fix, and may have power to farm or lease the same to any person or persons or corporation.

SEC. 12. Be it further ordained, That the stockholders of said company may pay the stock subscribed by them either in money, labor or material for constructing said road, as the board of directors may determine, and that all counties or towns subscribing stock to said company shall do so in the same manner and under the same rules, regulations and restrictions as are set forth and prescribed in the act incorporating the North Carolina and Atlantic Railroad Company, for the government of such towns and counties as are now allowed to subscribers to the capital stock of said company.

SEC. 13. Be it further ordained, That the company shall have power to construct branches of said road, one of which shall run from said towns of Winston and Salem by way of Mount Airy, in Surry county, to the line of the State of Virginia.

SEC. 14. Be it further ordained, That this ordinance shall be in force from and after its passage.

Ratified this 9th day of March, A. D. 1868.

CALVIN J. COWLES, *President.*

T. A. BYRNES, *Secretary.*

33 EXHIBIT "B."

Chapter 136 of the Laws of North Carolina, Session 1852.

SEC. 33. Be it further enacted, That it shall be lawful for any incorporated town or county near or through which said railroad may pass to subscribe for such an amount of stock in said company as they shall be authorized to do by the inhabitants of said town or the citizens of said county, in manner and form as hereinafter provided.

SEC. 34. Be it further enacted, That the corporate authorities of such town, of the justices of the peace of such county, a majority of the justices of the county concurring, to make an order requiring the constable of such town and the sheriff of such county, at such time and on such notice as they shall direct, to open a poll and take the sense of the voters of such town qualified to vote for town officers, and of the voters of such county qualified to vote for members of the house of commons of the General Assembly, whether the officers of said town and the justices of the peace of said county shall subscribe to the stock of such company for such sum as the order shall propose, and the constable shall make return of the number against it, and the sheriff shall, in like manner, make return as to the vote in his county to the first court thereafter, to be held for such county and it shall be the duty of the sheriff to notify each justice of said county to attend at the court-house, to which he may make his returns of said poll.

SEC. 35. Be it further enacted, That if upon the return of such constable and of such sheriff, it shall appear that a majority of the qualified voters of such town, and by the return of the sheriff that a majority of the qualified voters of such county voting upon the question are in favor of the subscription, the corporate authorities of such town and the justices of such county shall appoint an agent to make the subscription in behalf of such town and county, to be paid for in the bonds of such town and county, and on such time as shall be agreed on by said town officers and the justices of such county.

SEC. 36. Be it further enacted, That for the purpose of paying the quotas on said stock, as may be called for or the installments of such subscriptions as may fall due, the town authorities and the justices of the county shall have power to appoint an agent or agents to negotiate a loan or loans for and in the name of such

town and county; and it shall be the duty of the authorities of such town and the justices of such county to levy such taxes annually on the persons, lands and other personal property within such town and county as may be sufficient to pay the amount of such loan or loans and the interest thereon, and as said town authorities and the justices of such county shall deem necessary and proper, and to make such order or orders as shall be deemed necessary for the due collection and payment of the same; and the stock subscribed on behalf of such town and county shall stand pledged for the payment of the loan thus authorized to be contracted.

SEC. 37. Be it further enacted, That the right to the stock in the company hereby authorized to be subscribed, shall vest in the town and county making such subscriptions; and the corporate authorities of said town and the justices of such county shall have power from time to time to appoint a proxy to represent the stock in the meeting of the stockholders of the company, and also an agent to collect the dividends of such stock, and when collected, to apply the same to the payment of the bonds and interest negotiated as aforesaid.

34 EXHIBIT "C."

An act to authorize the Northwestern North Carolina Railroad Company to extend its road and to build branches thereof.

The General Assembly of North Carolina do enact:

SECTION 1. That it shall be lawful for the Northwestern North Carolina Railroad Company to extend and construct its line of road, or a branch thereof, to commence at or near Winston, in the county of Forsyth, through the counties of Forsyth, Davidson, Yadkin, Davie, Rowan and Iredell, or any or either of them, to Statesville, or some other point on the Western North Carolina railroad, and may build and operate additional branches thereto, or from its present main line to any important mines or manufactories in any of said counties, or counties adjacent to them: Provided, that nothing contained in this act shall operate to be construed so as to prevent or interfere with the construction of the North Carolina extension of the Virginia Midland railroad from Danville, Virginia, via Winston, Forsyth county, and Mocksville, Davie county, to some point on the Atlantic, Tennessee and Ohio railroad in Iredell county; but said company is hereby authorized to build said road under the organization and consolidation heretofore made by the stockholders and directors of the consolidated line composing the North Carolina extension.

SEC. 2. That to provide the means in whole or in part for this purpose, the said company may receive subscriptions in money, labor, property or otherwise, as the said company may agree, and may mortgage or otherwise pledge its property and franchises and the work constructed, or to be constructed, with the franchises and rights connected therewith.

SEC. 3. That any corporation, county, city, town or township interested therein, may subscribe to stock for said purpose, or other-

wise contribute to such work in such manner and in such amount as shall be determined by the proper authorities of such corporation, county, city, town or township, and agreed on with the said Northwestern North Carolina Railroad Company.

SEC. 4. This act shall be in force from and after its ratification.

In the General Assembly, read three times, and ratified this the 2d day of March, A. D. 1881.

EXHIBIT "D"

An act ratifying and confirming the charter of the Northwestern North Carolina Railroad Company.

SECTION 1. The General Assembly of North Carolina do enact, that an ordinance, entitled "An ordinance to incorporate the Northwestern North Carolina Railroad Company," ratified the 9th day of March, A. D. 1868, be and the same is hereby re-enacted, ratified and confirmed, and all acts and things heretofore done under the provisions of the said ordinance are hereby ratified and confirmed.

SEC. 2. That all the rights, powers and authorities conferred or purporting to be conferred by said ordinance, incorporating the Northwestern North Carolina Railroad Company, on the justices of the peace of Forsyth county, or of the county court of said county, be and the same are hereby conferred on the commissioners of said county.

SEC. 3. That the commissioners of the county of Forsyth
35 are hereby invested with full powers and authority to levy from time to time such tax as may be sufficient to pay the subscription made by said county to the capital stock of the Northwestern North Carolina Railroad Company, and any interest due thereon, or to liquidate any debt created by said county in borrowing money to pay such subscription stock.

Ratified the 11th day of August, A. D. 1868.

Replication.

Replying to the new matter set up in defendant's answer, the plaintiff says:

1. The plaintiffs admit that the Northwestern North Carolina Railroad Company was chartered by an ordinance of the constitutional convention of 1868, which is published as chapter XVII of the ordinances, passed by said convention, and that the sections of the charter of the Atlantic and North Carolina Railroad Company, referred to in section 12 of said ordinance, are those mentioned in the answer.

2. That plaintiffs have no knowledge, information or belief as to whether the company was organized as alleged, or whether the county of Forsyth voted a subscription as alleged in section 2 of said new matter, and are advised that the validity of the bonds in controversy in this action is in no way dependent on the validity of any bonds that may have been issued in payment of said sub-

scription, if any such were issued, as to which plaintiffs have no information on which to form knowledge or belief, and demand for strict proof.

3. Plaintiffs have no knowledge, information or belief as to whether any work was done on the present line of the Northwestern North Carolina railroad, lying between Greensboro and Winston, prior to the 10th of April, 1869, but deny that any grading had been done prior to said date west of the original terminus of the division of Winston prior to said date, and aver that the portion of the line of said railroad lying between Winston and Wilkesboro, in Wilkes county, N. C., is a new branch of said railway company, constructed under the requirement of the act referred to in the pleading, as ratified on the 20th day of February, 1879; and that said branch was not on the 10th day of April, 1869, or prior thereto, a part of an unfinished line.

4. That plaintiffs have no knowledge, information or belief as to whether the counties of Forsyth, Guilford or other counties in the State held stock as alleged in fourth section of said new matter; and the plaintiffs aver that the citizens of the county of Wilkes had no pecuniary interest, nor any other interest except such as they had in common with all citizens of North Carolina in the Northwestern North Carolina Railroad Company on the 10th day of April, 1869, or at any time prior thereto, until after the 6th day of November, 1888. And that they had had no pecuniary interest in said company or its road up to the time this action was brought, except such as purported to have arisen out of an exchange of the bonds of Wilkes county for those shares of stock in said company.

5. That plaintiffs admit that sections 1996 to 2000, inclusive, of the Code, are in terms the same as chapter 171 of the Laws of 1868–1869, but deny that the bringing forward of said act in the compilation known as Battle's Revisal, had any effect, in contemplation of law, the said revisal never having been lawfully enacted as a statute, nor as to the time when said company was organized, and demand strict proof.

6. In reply to section 6, contained in the new matter of defendant's answer, plaintiffs deny all allegations contained in said section, except that allegation that the bonds are not held
36 by said railroad company, but by *bona fide* holders, for value, as to which plaintiffs have no knowledge or sufficient information to form a belief, and therefore deny, except a legal proposition therein stated, and predicated upon said last-named allegation of fact, and plaintiffs are advised that they are not required to swear to any proposition of law.

7. Replying to the seventh section of the new matter contained in defendant's answer, plaintiffs deny that the board of commissioners of Wilkes county had at the time of issuing the one hundred thousand dollars of bonds in controversy, any authority in law to issue the same or deliver them as a binding contract on the county of Wilkes. Plaintiffs deny that the Northwestern North Carolina railroad, located between Winston and Wilkesboro, was an unfinished or incomplete road on the 6th day of November, 1888, or at

any time prior thereto, and plaintiffs are advised that no section of the compilation known as Battle's Revisal ever had the force and effect of a statute.

8. That plaintiffs have no knowledge or information or belief as to the time when the portion of said railroad located between Greensboro and Winston, was completed or begun to be operated. Plaintiffs have no knowledge or information sufficient to form a belief as to the allegation that the work of grading and constructing the road-bed from Winston to Wilkesboro — in 1887, but admits that some grading had been done between Winston and Wilkesboro before the end of the year 1887. But denies the conclusion of law that the portion of said railroad lying between Winston and Wilkesboro was an unfinished and incomplete road on November 6th, 1888.

9. It is not true that section 3, chapter 162 of the Laws of 1881, purports to enact, " that any corporation, county, city, town or township interested therein, may subscribe to stock for said purpose (of extending said line of the railroad), or otherwise contribute to such work in such manner as shall be determined by the proper authorities of such corporation, county, city or town or township, and agreed on with the said Northwestern North Carolina Railroad Company. But the said act failed to pass on its third reading in the house of representatives, as appears from a certified copy of the journal of said house, which will be offered in evidence.

Further replying to the new matter in section 14 of the defendant's answer, the plaintiffs say that they are informed and believe that the defendant made payment of interest and took up coupons on the bonds in controversy after the service of summons on him in this action, and plaintiffs aver, according to their information and belief, the defendant, when said payment was made, had information that it was the purpose of the plaintiffs to apply to the courts for an order restraining him from making further payments of the interest on said bonds.

(Signed) A. C. AVERY,
(Signed) FINLEY & GREEN,
(Signed) T. J. DULA,
Attorneys for Plaintiff.

C. C. Wright, one of the plaintiffs above named, maketh oath that the facts set forth in the foregoing reply, as of his own knowledge, are true, and those stated on information and belief, he believes to be true.

(Signed) C. C. WRIGHT.

Sworn to and subscribed before me, this the 29th day of January, 1898.

(Signed) H. R. STARBUCK,
Judge Superior Court.

HOUSE OF REPRESENTATIVES,
TUESDAY, *January* 14*th*, 1879.

By Mr. York, a bill to amend the charter of the Northwestern North Carolina Railroad Company for the construction of a second division from Winston and Salem, Forsyth county, up the Yadkin River valley by Wilkesboro to Patterson, Caldwell county.

Referred to the committee on railroads, post-roads, etc.

HOUSE OF REPRESENTATIVES,
SATURDAY, *January* 18*th*, 1879.

Mr. Vaughan, from the committee on railroads, post-roads, etc., reports on H. B. 103, a bill to amend the charter of the Northwestern North Carolina railroad, for the construction of a second division from the towns of Salem and Winston, Forsyth county, up the valley of the Yadkin river, by Wilkesboro to Patterson, Caldwell county, recommending its passage, with the adoption of an accompanying amendment.

HOUSE OF REPRESENTATIVES,
MONDAY, *January* 20*th*, 1879.

On motion of Mr. York:

H. B. 103, a bill to amend the charter of the Northwestern North Carolina railroad, W. C. R. R., for the construction of a second division from Winston, Forsyth county, up the Yadkin valley by Wilkesboro to Patterson, in Caldwell county, is taken up for consideration.

The question is on the amendment suggested by the committee, and it is adopted; and as amended, the bill passes its second reading; and then, on motion of Mr. York, is referred to the committee on internal improvements, with order to be printed, and it is so ordered by the house.

HOUSE OF REPRESENTATIVES,
THURSDAY, *January* 30*th*, 1879.

Mr. York, on the part of the committee on internal improvements, submits the following reports on ——; and,

H. B. 103, a bill to amend the charter of the Northwestern North Carolina railroad, etc., recommending its passage with amendments proposed.

HOUSE OF REPRESENTATIVES,
SATURDAY, *February* 1, 1879.

H. B. 103, an act to amend the charter of the Northwestern North Carolina railroad, etc., is taken up on its third reading.

Mr. York submits a new section, to be added to the bill by way of amendment, which is accepted.

Mr. Richardson submits the following amendments, which is accepted:

"Provided, that nothing in this charter shall be construed to exempt said road from taxation."

Mr. Carter of Buncombe, submits an amendment, which, after discussion, is withdrawn.

The question is then put on the amendments offered by the committee and they are accepted; and the question recurs on the passage of the bill.

Mr. Powers sends forward the following amendment:

Amend by inserting in the proper place, "Provided, however, that any county, township, or other corporate authorities who shall issue any bonds or assume any obligations in behalf of this road shall be required to commence as soon as said obligations are
38 assumed, to provide a sinking fund that shall be sufficient to liquidate said bonds or obligations at maturity."

Mr. Christmas sends forward the following amendment:

"Strike out in line 6 the words 'a person' and insert 'two persons in the eastern part of the State and one in the western part;' and insert in line 17 between the words 'toll' and 'who are not in any respect interested in said work.'"

The question is put on the amendment, and it is rejected.

Mr. Turner sends the following amendment:

Strike out "convict and convict labor wherever it occurs in the bill."

The question is put on this amendment and it is rejected; and the question recurs on the passage of the bill; and it passes by the following vote, and is ordered to be engrossed and transmitted to the senate:

Ayes—Messrs. Amis, Anderson, Angier, Ardrey, Armstrong, Bateman, Burhod, Bingham, Bizzell, Blocker, Bonner, Bost, Brown of Yadkin, Brison, Buchan, Cale, Carter of Buncombe, Carter of Yancey, Carrol, Carson, Clark, Colwell, Council, Covington, Davis of Haywood, Deans, Dickson, Dunn, Ellison, English, Etheridge, Ferrell, Foard, Foster, Fulcher, Goldston, Grant, Harrill, Harrison, Hewett, Hines, Holt, Jones, Johnson of Davie, Lamb, Leatherwood, Lockhart, Lowrie, Lutterlow, Meares, Miller, McLean, Normant, Oliver, Orchard, Packston, Pettipher, Powers, Rawley, Reed of Macon, Richardson of Columbus, Robertson, Smith, Taylor, Turner, Venable, Wheeler, Wimberly, York, Young—total, ayes 72.

Nays—Carter of Warren, Christmas, Henderson, Horton, Osborne, Wynne—nays, 6.

HOUSE OF REPRESENTATIVES,
THURSDAY, *February 20th*, 1879.

The committee on enrolled bills reports as correctly enrolled:

An act to amend the charter of the Northwestern North Carolina railroad, and for the construction of a second division from the towns of Winston and Salem, Forsyth county, up to the Yadkin valley to and by Wilkesboro, Patterson's factory, Caldwell county.

SENATE CHAMBER, *February 4th*, 1879.

A message was received from the House, ——, transmitting for concurrence:

H. B. No. 103, S. B. No. 378, bill to amend the charter of the Northwestern North Carolina railroad for the construction of a

division from the towns of Salem and Winston, up the Yadkin valley by Wilkesboro, to Patterson's factory, in Caldwell county.

Referred to the committee on internal improvements.

SENATE CHAMBER, *February 11th*, 1879.

From the committee on internal improvements:

By Mr. Brower, H. B. No. 103, S. B. No. 378, bill to amend the charter of the Northwestern North Carolina railroad, for the construction of a second division from the towns of Winston and Salem, Forsyth county, up the Yadkin valley by Wilkesboro to Patterson's factory, Caldwell county, recommending it do pass.

Calendar.

On motion of Mr. Nicholson, H. B. No. 103, S. B. 378, bill
39 to amend the charter of the Northwestern North Carolina railroad for the construction of a second division from the towns of Winston and Salem, Forsyth county, up the Yadkin valley by Wilkesboro to Patterson's factory, in Caldwell county, was taken up on its second reading as passed—ayes 33, noes 5, as follows:

Those voting in the affirmative were:

Messrs. Alston, Black, Bledsoe, Brower, Bryan of Duplin, Bryan of Pender, Bull, Caldwell, Dancey, Davidson, Dortch, Eppes, Graham of Lincoln, Graham of Montgomery, Harriss, Henderson, Holleman, Hoyle, Leach, Lyon, Matheson, Merritt, Mitchell, Moye, Nicholson, Ormand, Redwine, Ross, Scales, Stuart, Taylor, Wardell, Ward—33.

Those voting in the negative were:

Messrs. Alexander, Austin, King, Mebane, Williamson—5.

SENATE CHAMBER, *February 12th*, 1879.

H. B. No. 103, S. B. No. 378, bill to amend the charter of the Northwestern North Carolina railroad for the construction of a second division, for the towns of Winston and Salem, in Forsyth county, up the Yadkin valley by Wilkesboro to Patterson's factory, in Caldwell county, passed its third reading—ayes 35, noes 1, as follows:

Those voting in the affirmative were:

Messrs. Alston, Bledsoe, Brower, Bryan of Duplin, Bryan of Pender, Bull, Bynum, Caldwell, Dancey, Dortch, Eaves, Eppes, Erwin, Everett, Graham of Lincoln, Harris, Henderson, Holleman, Hoyle, King, Leach, Lyon, Matherson, Mitchell, Nicholson, Ormand, Redwine, Respass, Rose, Scales, Stuart, Taylor, Waddell, Waldo, Ward—35.

Mr. Williamson voted in the negative.

SENATE CHAMBER, *February 20th*, 1879.

The committee on enrolled bills reported as correctly enrolled:

H. B. 103, S. B. 378, an act to amend the charter of the Northwestern North Carolina railroad and for the construction of a second division from the towns of Salem and Winston, Forsyth county, up the Yadkin valley by Wilkesboro, to Patterson's factory, Caldwell county.

SENATE CHAMBER, *January 21st*, 1881.

Bills and resolutions were introduced, read the first time and disposed of as follows:

By Mr. Tucker, S. B. 224, bill to authorize the Northwestern North Carolina railroad to extend its railroad and to build branches thereof.

Referred to the committee on internal improvements.

SENATE JOURNAL, *January 25th*, 1881.

From the committee on internal improvements:

By Mr. York, S. B. 224, bill to authorize the Northwestern North Carolina railroad to extend its road and to build branches thereof, recommending it do pass.

Calendar.

SENATE JOURNAL, *January 29th*, 1881.

Bills and resolutions upon the calendar were taken up and disposed of as follows:

S. B. 224, bill to authorize the Northwestern North Carolina railroad to extend its road and to build branches thereof.

40 On its second reading, Mr. Scott of New Hanover moves the bill be postponed until Thursday next. Lost.

Bill then passed its second reading—ayes 26, noes—as follows:

Those voting in the affirmative were:

Messrs. Bernard, Burwell, Carr, Cunningham, Davidson, Dever, Dickey, Dortch, Eaves, Finger, Hanes, Hooper, Jenkins, Jones, King, Lockhart, Mebane, Newland, Oats, Pridgen, Richardson, Scott of New Hanover, Shears, Staples, Tucker, York—26.

The calendar.

SENATE CHAMBER, *February 5th*, 1881.

S. B. 224, bill to authorize the Northwestern North Carolina railroad to extend its road and to build branches thereof on its third reading.

Mr. Glenn moves to amend:

Add to the first section the following: "Provided that nothing contained in this act shall operate or be construed so as to prevent or interfere with the construction of the North Carolina extension of the Virginia Midland railroad from Danville, Virginia, via Winston, Forsyth county, and Mocksville, Davie county, to some point on the Atlantic, Tennessee and Ohio railroad, in Iredell county; but said company is hereby authorized to build said railroad under the organization and consolidation heretofore made by the stockholders and directors of the consolidated line, comprising the North Carolina extension."

Mr. Tucker moves to amend the amendment:

"Strike out all after the words 'Iredell county" in line 12." Lost.

Mr. Glenn's amendment was adopted.

Bill then passed its third reading, ayes 34, as follows:

Messrs. Battle, Blue, Burwell, Carr, Davidson, Dickey, Dortch, Faison, Finger, Foil, Glenn, Gudger, Hampton, Hanes, Harper, Harris, Jenkins, Jones, Manning, Mebane, Merritt, Newsom, Oats, Parish, Richardson, Scott of New Hanover, Scott of Rockingham, Spears, Spruill, Stowe, Tucker, Whitaker, Williamson of Davie and Wynne—34.

SENATE CHAMBER, *February* 11*th*, 1881.

From the committee on engrossed bills:

By Mr. Spears, S. B. 224, bill to authorize the Northwestern North Carolina railroad to extend its road and build branches thereto.

SENATE CHAMBER, *March* 2, 1881.

From the committee on enrolled bills:

S. B. 224, H. B. 634, an act to authorize the Northwestern North Carolina Railroad Company to extend its road and build branches thereof.

HOUSE OF REPRESENTATIVES,
FRIDAY, *February* 11*th*, 1881.

A message from the senate is announced, transmitting S. B. 224, a bill to authorize the Northwestern North Carolina railroad to extend its road and build branches thereof.

S. B. 224 is referred to the committee on corporations.

41 HOUSE OF REPRESENTATIVES,
SATURDAY, *February* 12*th*, 1881.

Reports of Committees.

—— favorably on ——; and, S. B. 224, H. B. 634, a bill to authorize the Northwestern North Carolina railroad to extend its road and build branches thereto.

HOUSE OF REPRESENTATIVES,
MONDAY, *February* 21*st*, 1881.

S. B. 224, H. B. 634, a bill to authorize the Northwestern North Carolina railroad to extend its road and build branches thereto.

HOUSE OF REPRESENTATIVES,
TUESDAY, *February* 22, 1881.

The morning hour having expired, on motion of Mr. Carter, the vote by which S. B. 224, H. B. 634, a bill to authorize the Northwestern North Carolina railroad to extend its road and build branches thereof, is reconsidered; and the bill is placed on the calendar.

HOUSE OF REPRESENTATIVES,
THURSDAY, *February* 24*th*, 1881.

The calendar is taken up, and,

S. B. 224, H. B. 634, a bill to authorize the Northwestern North Carolina railroad to extend its road and build branches, is put on its third reading.

Mr. Carter offers the following amendment:

Amend by adding to section 3 the following words: "Provided, that nothing in this act contained shall be construed to authorize or empower the Western North Carolina Railroad Company to lend its credit, or otherwise in any manner contribute to the work or any part thereof contemplated in this act."

The amendment is adopted; and as amended, the bill passes its third reading, and is ordered to be sent to the senate with engrossed amendments.

HOUSE OF REPRESENTATIVES,
WEDNESDAY, *March 2d*, 1881.

Mr. Green of Orange, from the committee on enrolled bills, reports the following bill to have been correctly enrolled: An act to authorize the Northwestern North Carolina Railroad Company to extend its road and to build branches thereof.

Certificate of Secretary of State, North Carolina.

DEPARTMENT OF STATE,
RALEIGH, N. C., *January 15th*, 1897.

I, Cyrus Thompson, secretary of state, do hereby certify that the foregoing and annexed nine sheets contain a full and accurate transcript of the Journals of the Senate and House of Representatives of the State of North Carolina, for the Session of the General Assembly in the Year 1879, of so much of said journal as relates to H. B. 103, S. B. 378, a bill to be entitled An act to amend the charter of the Northwestern North Carolina railroad, and for the construction of a second division from the towns of Winston and Salem, Forsyth county, up the Yadkin valley by Wilkesboro to Patterson's factory, Caldwell county, the title, as published, of chapter 43, Public Laws of the Session of 1879; and of so much of the Journals of the Senate and House of Representatives of the State of North Carolina, for the Session of the General Assembly in the Year 1881, as relates
42 to S. B. 224, H. B. 634, a bill to be entitled An act to authorize the Northwestern North Carolina Railroad Company to extend its road and to build branches thereof, the title, as published, of chapter 162 of Public Laws of the Session of 1881.

Done in office at Raleigh, this the 15th day of January, A. D. 1897.

[SEAL.] CYRUS THOMPSON,
Secretary of State.

Affidavits of G. W. Hinshaw.

G. W. Hinshaw, being duly sworn, deposes and says that he is now, and was, in the spring of 1868, a resident of the town of Winston, Forsyth county, N. C. That in the spring of 1868 the county of Forsyth voted a subscription of one hundred thousand dollars to the Northwestern North Carolina Railroad Company. That thereafter and before the 6th day of November, 1888, the county of Forsyth became the owner of seventy-five thousand dollars of stock

in said Northwestern North Carolina Railroad Company; and prior to said day in November, 1888, citizens of the county of Forsyth and of other counties in the State of North Carolina, became owners of stock in the said Northwestern North Carolina Railroad Company, and that said county of Forsyth and said citizens were owners of said stock on said 6th day of November, 1888, and remained owners of said stock until the year 1895. That he is acquainted with the issuing of the bonds of Wilkes county in aid of the completion of the Northwestern North Carolina railroad; that none of the bonds are now held or owned by the Northwestern North Carolina Railroad Company, but the same were sold for value by the said railroad company before the year 1893. That the construction of the Northwestern North Carolina railroad from Greensboro, N. C., to Winston and Salem, N. C., was finished about the year 1873, and the line has since been and is now operated as a railroad line, freight and passenger trains having been run over the line of the same between Greensboro, N. C., and Winston and Salem, N. C., a distance of some twenty-nine miles. That in the year 1887, the work of constructing the road and of grading the road-bed between Winston, in Forsyth county, and Wilkesboro, in Wilkes county, was begun; and the work of grading said road-bed was continued until the work was completed, to or near Wilkesboro, in the year 1890. That on the 6th day of November, 1888, the said Northwestern North Carolina railroad, between the towns of Winston and Wilkesboro, was an unfinished and incomplete railroad, the work of constructing the said railroad between the said towns having not been finished on said day in November, but the same being in an unfinished condition on said day, many miles of the line between said towns of Winston and Wilkesboro being ungraded and unfinished.

(Signed) G. W. HINSHAW.

Sworn and subscribed before me, this the 27th day of January, 1898.

N. S. WILSON,
Clerk Superior Court,
By SAM F. VANCE, *D. C.*

G. W. Hinshaw, being duly sworn, says that he was acquainted with the vote of the people of Wilkes county, referred to as Exhibit "A" in the suit and attached to the complaint of plaintiff. That the vote was taken, based upon a contract with the Richmond and Danville Railroad Company instead of upon a contract with the Northwestern North Carolina Railroad Company, and the same was abandoned for that reason and another vote taken in November, 1888.

(Signed) G. W. HINSHAW.

43 Sworn to and subscribed before me, this 28th day of January, 1898.

(Signed) H. R. STARBUCK,
Judge Superior Court.

Certificate of Stock.

Northwestern North Carolina Railroad Company, No. 159; three hundred and thirty shares. Capital stock, two million dollars. Shares one hundred dollars each.

Be it known, that commissioners of Wilkes county are entitled to three hundred and thirty shares in the Northwestern North Carolina Railroad Company, transferable by the said commissioners, either personally or by attorney, only at the office and in the books of said company.

Witness, A. B. Andrews, president of the Northwestern North Carolina Company at Raleigh, N. C., under the seal of the corporation, this 9th day of May, A. D. 1890.

A. B. ANDREWS, *President.*

W. BROOK, *Secretary.*

Northwestern North Carolina Railroad Company, No. 160; six hundred and seventy shares. Capital stock, two million dollars. Shares, one hundred dollars each.

Be it known, that commissioners of Wilkes county are entitled to six hundred and seventy shares in the Northwestern North Carolina Railroad Company, transferable by the said —, either personal- or by attorney, only at the office and in the book- of said company.

Witness, A. B. Andrews, president of the said Northwestern North Carolina Railroad Company, at Raleigh, N. C., under the seal of the corporation, this 25th day of July, A. D. 1890.

A. B. ANDREWS, *President.*

W. BROOK, *Secretary.*

Certificate of Register.

NORTH CAROLINA, }
Wilkes County. }

I, E. M. Blackburn, register of deeds for Wilkes county, do hereby certify that the foregoing is a true copy, as occurs on railroad-claim book, as appears in my office.

E. M. BLACKBURN,
Register of Deeds.

February 14, 1898.

Affidavit of W. H. Watkins.

W. H. Watkins, being duly sworn, deposes and says that in November, 1868, he was living near Clemmonsville, Davidson county, N. C., about eleven miles southwest of the towns of Winston and Salem. That in November, 1868, he left home and went to work as a foreman of hands, who were engaged in grading the road-beds of the Northwestern North Carolina railroad, about six miles east of the town of Salem, on the Levi Crews place. That

there was under him about thirty-five hands. That he continued to work there in the construction of said road-bed during the winter of 1868 and the spring of 1869, and remained as such foreman of hands grading said road at different points along the line until the entire line of road between Winston and Greensboro was completed, two or three years afterwards. That during the winter of 1868 and spring of 1869 there were several companies of hands grading the said road-bed at different points along the line; and by the first of April, 1869, considerable grading had been done on said road-bed. That this work was being done by railroad company, under the general supervision of Edward Belo, now deceased, who was president of said railroad company.

W. H. WATKINS.

44 Sworn to and subscribed before me, this 28th day of January, 1898.

N. S. WILSON,
Clerk Superior Court,
By SAM F. VANCE, *D. C.*

Clerk's fee, twenty-five cents. Paid.

Affidavit of Rufus Harmon.

Rufus Harmon, being duly sworn, deposes and says that he was, in the year 1868, and is now, a resident of the town of Kernersville, in Forsyth county, North Carolina, a town on the line of the Northwestern North Carolina Railroad Company. That about the middle of October, 1868, Edward Belo, the president of the Northwestern North Carolina Railroad Company, sent to Kernersville for this affiant, and asked him to go on to Jonathan Crews' place, in Forsyth county, N. C., about three miles east of Salem, to build stockades for the hands employed by said Belo to grade the road-bed of said railroad. That this affiant went immediately, or within a few days, to the said Crews' place, and on his arrival found three companies of hand- with wheelbarrows, grading the road-bed of said railroad. That he remained with these companies of hands, made up of about twenty-five men each until some time in April, 1869, when he was transferred to work on the line of said railroad in Guilford county. There, companies of hands, at first with wheelbarrows and afterwards with cars and mules, worked in grading said railroad from the middle of October, 1868, to April, 1869, continuously, with the possible exception of a few wet or cold days. That in addition to the carpenter work done by him, he was appointed commissary of subsistance, and gave out the rations to the hands, and before leaving, in April, 1869, he was giving out rations to about one hundred and fifty railroad hands. Edward Belo, now dead, was president of the railroad company during these months, and had general charge of the building of the road. In April, 1869, he was appointed by the chief superintendent of hands, J. J. Cahill, assistant superintendent of the construction force, and was sent to Guilford county

and took charge of supplying the hands who were working in the county of Guilford on said road. That in April, 1869, several companies of hands began to work on the grading of the road in Guilford county, the work of grading continuing in the county of Forsyth. After remaining for some time at work in Guilford county, he was transferred to the work of grading at Bath Branch, in the county of Forsyth, just east of the town of Salem, N. C.

R. HARMON.

Sworn to and subscribed before me, this 21st day of January, 1898.

J. M. GUYER, *J. P.*

Fees, twenty-five cents. Paid.

Affidavit of C. C. Wright.

C. C. Wright, being duly sworn, says that he is and has been a citizen and resident of Wilkes county for thirty-five years; that he was cognizant of the proceedings had in the railroad election mentioned, on June 16, 1887, and of the subsequent election held on November 6, 1888; and that never before has he heard that the reason the Northwestern North Carolina railroad was not completed, in accordance with the proposition first submitted, was because it was voted to the Richmond and Danville Railroad Company, and not voted to the Northwestern North Carolina Railroad Company, as alleged in the affidavit of G. W. Hinshaw. But that the reason publicly given to the people of Wilkes county was that the
45 time was too short for the railroad company to build the road, and, therefore, an extension of time was asked.

C. C. WRIGHT.

Subscribed and sworn to before me, January 29, 1898.

H. R. STARBUCK, *Judge.*

Admission of Counsel.

I admit that the act of 1868, chapter 171, purporting to provide for submitting the question of subscription, was read three times on different days in each house of the General Assembly, and was passed in accordance with the requirements of the constitution, article 2, section 14.

I do not admit, either, that said act or any part of it was in force, when either vote was taken in Wilkes county, as set forth in the exhibit to the plaintiff's complaint, or that, if in force, it authorized either of said elections.

(Signed) A. C. AVERY.

Winston, February 15, 1898.

Injunction.

This cause coming on to be heard before Starbuck, judge, at chambers in Winston, upon a motion by plaintiff to enjoin defend-

ant until the final hearing from paying any portion of the principal or interest of the bonds issued by the county of Wilkes and described in the complaint. Upon consideration of the pleadings, treated as affidavits upon this hearing, the exhibits and all the affidavits and evidence introduced, it is now adjudged that the defendant, Clarence Call, sheriff of Wilkes county be, and he is hereby enjoined and restrained until the final hearing of this cause from paying any portion of the moneys belonging to the county of Wilkes, and in his hands upon the principal or interest of the said bond.

This February 18th, 1898.

(Signed) HENRY R. STARBUCK,
Judge Superior Court, Ninth Judicial District.

(To this judgment defendant excepts. Fifteen days allowed defendant to serve statement of case on appeal, and ten days thereafter allowed plaintiffs to serve exceptions or counter-statements. Appeal bond fixed at one hundred dollars.)

(Signed) H. R. STARBUCK, *Judge, etc.*

Order to Make New Parties Defendant.

On motion of Richard N. Hackett, counsel for J. M. Turner and J. M. Wellborn, and by consent of the plaintiff, the said J. M. Turner and J. M. Wellborn, as the owners of one of the bonds of the county of Wilkes, the validity of which is controverted in the above-entitled action, are allowed to make themselves parties defendant to said action, and to file an answer.

(Signed) ALBERT L. COBLE,
Judge Presiding.

Answer of J. M. Wellborn and J. M. Turner.

The defendants, J. M. Turner and J. M. Wellboro, in answer to complaint, say:

I. That since this action was brought they have become the owners of one of the bonds, the validity of which is controverted in the above-entitled action and which were issued by the county of Wilkes, the number and amount being set forth in the complaint; and that the bond, of which they have so become the owners, is numbered 34, of the series of one hundred, issued at the time mentioned in the complaint.

II. That they adopt the answer of their codefendant, Clarence Call, treasurer of Wilkes county, as their own, and ask that it be taken and considered as the answer of these defendants to all intents and purposes, as if these defendants had denied the allega-
46 tions of the complaint, which are controverted by said Call in detail, and in the very language used in the answer of said Call.

III. That these defendants are advised, informed and believe that the rights of themselves and of the other owners of the said one

hundred bonds, issued by the county of Wilkes, as owners of such bonds have not been adjudicated in this action.

IV. Wherefore, these defendants pray:

1. That the order made by his honor, H. R. Starbuck, judge, at chambers in Winston, N. C., containing the restraining order theretofore granted in this case, until the hearing of the cause, be vacated.

2. That said bonds be declared valid.

3. For such other and further relief as to the court may seem just.

4. For costs of action.

(Signed) RICHARD N. HACKETT,
Attorney for Defendants Turner and Wellborn.

J. M. Turner and J. M. Wellborn, being duly sworn, depose and say, each for himself, that the facts stated in the foregoing answer as of his own knowledge are true, and those stated on information and belief he believes to be true.

(Signed) J. M. TURNER.
(Signed) J. M. WELLBORN.

Sworn to and subscribed before me, this the 8th day of March, 1898.

(Signed) A. W. VANNOY,
Clerk Superior Court,
By H. T. SMOAK, *D. C.*

Order of Removal.

This cause, coming on to be heard before his honor, Coble, judge, upon motion of Richard N. Hackett, counsel for the defendants, J. M. Turner and J. M. Wellborn, who had been made parties defendant, and had answered at the present term of the court, to vacate and set aside the judgment of his honor, H. R. Starbuck, judge, rendered at chambers at Winston, and containing the restraining order theretofore made to the hearing of the cause; and it appearing that a holder of the bonds, the validity of which is controverted, is related by affinity to the presiding judge.

It is by consent of counsel for the plaintiffs and counsel for defendants, J. M. Turner and J. M. Wellborn, ordered that *that* the motion be removed, to be heard before H. R. Starbuck, judge riding the tenth judicial district, at chambers, at Marion, North Carolina, on Monday, March 14, 1898, at 8 o'clock p. m.

The counsel for the defendants, Turner and Wellborn, being engaged at a term of the superior court of Wilkes county, which is expected to last beyond the 14th of March, at the request of said counsel, the counsel for the plaintiff agrees that all of the testimony offered at the hearing at Winston, before Judge Starbuck, shall be considered as offered at the hearing at Marion, on the 14th instant, subject to any objections as to competency made at the former hearing; and that his honor, Judge Starbuck, at the time of said hearing at Marion, or as soon thereafter as may be convenient to him, may

make up a statement of case on appeal, without notice to the counsel, it being understood that the party against whom judgment may be rendered will desire to appeal to the supreme court of North Carolina.

It is further understood between counsel that the agreement
47 this day, signed with a view to hearing before Judge Coble of the motion submitted, shall be considered as binding on the hearing before Starbuck, judge, at Marion on March 14th.

(Signed) ALBERT L. COBLE,
Judge Presiding.

It is agreed that in addition to the pleadings and exhibits and affidavits offered at the former hearing, the original charter of the Northwestern North Carolina Railroad Company, passed by the constitutional convention of 1868, and all amendments thereto, including the amendatory acts of 1879 and 1881, shall be read in evidence; and that the amendments passed in 1879 and in 1881, purporting to give to another authority to submit the question of subscription to the capital stock of the company, were not passed by the house of representatives in accordance with the requirements of the constitution, and the certified exhibits from the journals of said sessions need not be offered or sent up as a part of the testimony.

It is agreed that the only legislation that is relied upon to give such authority is the original charter, passed as an ordinance of the constitutional convention of 1868, and the general statute enacted in 1868, as chapter —, being in the same language as contained in the Code, sections 1996 to 2000, both inclusive.

It is further agreed that the plaintiff still objects to the testimony offered for the defendant, Call, on the former hearing, to show when the Northwestern North Carolina Railroad Company was organized or incorporated.

(Signed) A. C. AVERY,
Attorney for Plaintiffs.

(Signed) RICHARD N. HACKETT,
Attorney for Defendants J. M. Turner and J. M. Wellborn.

Judgment.

This cause, coming on to be heard, upon motion of Richard N. Hackett, attorney for J. M. Turner and J. M. Wellborn, the holders of one of the bonds issued by the county of Wilkes, the validity of which is now in controversy in this action, and it appearing that said motion was made before Coble, judge, at the spring term, 1898, of the superior court of Wilkes county; and that the said judge, being related by affinity to some of the holders of the bonds in controversy, said motion was by consent of counsel removed, to be heard at chambers, at Marion, on the 14th of March, 1898; and by consent of counsel for plaintiffs and counsel for the said Turner and Wellborn, the hearing of said motion was continued, first to be heard at Winston on March 18th, 1898, and subsequently to be

heard at Morganton, on March 22d, 1898; and being heard at last-named time and place, before the undersigned, upon the testimony heretofore offered, as set forth in a written agreement of counsel:

It is now, on motion of A. C. Avery, Finley and Green and Thomas Dula, counsel for plaintiff-, and upon hearing and considering the documentary evidence, mentioned in said agreement of counsel, considered and adjudged, that the motion to vacate, made on behalf of the defendants, Turner and Wellborn, as holders of one of the bonds in controversy. The order heretofore made containing restraining order until the hearing of the cause, be refused upon the ground that the bonds in controversy were issued by the board of commissioners of Wilkes county, without lawful authority so to do, and are invalid and void.

From the judgment of the court, refusing to vacate the said order containing the injunction to the hearing, the defendants,
48 Turner and Wellborn, appealed. Notice of appeal was waived, and an appeal bond in the sum of one hundred dollars adjudged sufficient.

H. R. STARBUCK,
Judge Riding Tenth Judicial District.

Statement of Case on Appeal.

It having been agreed that the undersigned should make up the statement of case on appeal without summoning counsel, it is ordered that the portions of the record and the evidence mentioned in the agreement of counsel, entered into at spring term, 1898, in the superior court of Wilkes county, together with the summons pleadings, exhibits, orders, heretofore made, and the foregoing judgment, rendered at chambers, at Morganton, on the 22d of March, 1898, shall constitute the statement of case on appeal.

H. R. STARBUCK,
Judge Riding Tenth Judicial District.

I, A. M. Vannoy, clerk superior court for the county of Wilkes, do hereby certify that the foregoing is a true statement of the case on appeal, as made up by Starbuck, judge.

This March 30th, 1898.

A. M. VANNOY,
[SEAL.] *Clerk Superior Court.*

49 NORTH CAROLINA,
Wilkes County.

In Superior Court, Spring Term, 1898.

THE BOARD OF COMMISSIONERS OF WILKES COUNTY and C. C. Wright
vs.
CLARENCE CALL, Treasurer, and J. M. TURNER and J. M. Wellborn.

Agreement of Counsel.

Amend section 3 of the answer of J. M. Turner and J. M. Wellborn by adding the words: "And defendants invite all other owners of said bonds to come in and make themselves parties defendant in this action, and to contribute to the cost of adjudicating their rights."

We agree that on motion of Richard N. Hackett, attorney for defendants Turner and Wellborn, the foregoing amendment was allowed by his honor Judge Starbuck to be made, but has in some way been lost out of the record, and counsel are willing that the Supreme Court shall consider it as a part of the record on appeal without printing.

A. C. AVERY,
Attorney for Plaintiffs.
RICHARD N. HACKETT,
Attorney for Defendants Wellborn & Turner.

Docket Entries.

Appeal docketed April 1, 1898; argued April 6, 1898; held under *advisari*. Opinion of the court by Douglas, J., filed November 9, 1898—Furches, J., and Faircloth, C. J., dissenting—as follows:

50 N. C. Supreme Court, Feb. Term, 1898.

COMMISSIONERS OF WILKES COUNTY
vs.
CLARENCE CALL ET AL., Appellants. # 338. Wilkes Co.

A. C. Avery for plaintiff; no counsel *contra*.

DOUGLAS, *J.*:

This is an action brought to test the validity of certain bonds issued by Wilkes county in payment of its subscription to the stock of the Northwestern North Carolina Railroad Company. The suit was brought by the commissioners of the county of Wilkes against the county treasurer. The defendants Turner and Wellborn, who had become the owners of one of the bonds after the bringing of this action, by leave of the court, became parties defendant and in-

vited all other bondholders to come in and join them in resisting the action.

In the face of each bond, dated Oct. 1, 1889, appears the explicit statement that "this bond is one of a series of one hundred bonds of the denomination of one thousand dollars each, issued by authority of an act of the General Assembly of North Carolina, ratified the 20th day of February, A. D. 1879, entitled 'An act to amend the charter of the Northwestern North Carolina railroad for the construction of a second division from the towns of Winston and Salem, in Forsyth county, up the Yadkin valley, by Wilkesboro, to Patterson's factory, Caldwell county,'" etc. The bond does not allude in any way to any other legislative act nor does it profess to claim further validity than that derived from the recited act.

It is admitted, as well as clearly shown by the evidence, that this act of February 20, 1879, was not passed in accordance with the mandatory provisions of the constitution of this State, as construed by this court, inasmuch as upon the passage of said bill upon its second reading in the house of representatives there was no call of the ayes and noes; and, further, that the vote upon such reading was not recorded in the journal of the house. Const., art. 2, sec. 14. The amendatory act of 1881 is subject to the same objection. In view of the recent decisions of this court, it is useless to discuss this question now, as the rule has been definitely settled in the
51 following cases: Bank *vs.* Commissioners of Oxford, 119 N. C., 214; Commissioners *vs.* Snuggs, 121 N. C., 394; Charlotte *vs.* Shepard, 120 N. C., 411, and 122 N. C., 602; Rodman *vs.* Town of Washington, 122 N. C., 39.

Under the authority of these decisions we are compelled to hold that the entire issue of these bonds is null and void for want of legislative authority. An act of the legislature passed in violation of the constitution of the State or in disregard of its mandatory provisions is to the extent of such repugnance absolutely void, and all bonds issued thereunder bear the brand of illegality stamped upon their face by the hand of the law.

52 The act under which these bonds profess to have been issued was never legally passed and never became a law. As was said in Norton *vs.* Shelby County, 118 U. S., 425: "An unconstitutional act is not a law; it confers no rights, it imposes no duties, it affords no protection, it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." The constitution of the State is plenary notice to the world of its organic law. There can be no *bona fide* holders of unconstitutional obligations, nor can ignorance of public statutes and legislative journals be deemed otherwise than wilful or negligent. The journals are published for the information of the public, and are widely distributed and easily accessible, fully as much so as the public records of a county. Surely no one would be heard to say that he was the *bona fide* owner of a piece of land simply because he held a deed therefor, when an inspection of the records would show that his grantor had no power to convey. It has been well said in U. S. *vs.* Macon County Court, 99 U. S., 582: "The difficulty lies in the want

of original power. While there has undoubtedly been great recklessness on the part of the municipal authorities in the creation of bonded indebtedness, there has not unfrequently been *gross carelessness* on the part of purchasers when investing in such securities. Every purchaser of a municipal bond is chargeable with notice of the statute under which the bond was issued. If the statute gives no power to make the bond, the municipality is not bound."

A careful distinction should be drawn between the want of power to issue bonds and mere irregularities in the exercise of that
53 power. The latter, under certain circumstances, may be cured by recitals or eliminated by estoppel; but a want of power goes to the very root of the transaction and destroys its vitality. A tree may yet live, though its branches are badly shattered by the storm, but the last leaf falls when the root is dead.

This rule has been clearly laid down by the Supreme Court of the United States in the oft-cited case of Anthony *vs.* County of Jasper, 101 U. S., 693, where Chief Justice Waite says: "Dealers in municipal bonds are charged with notice of the laws of the State granting power to make the bonds they find on the market. This we have always held. If the power exists in the municipality the *bona fide* holder is protected against mere irregularities in the manner of its execution, but if there is a want of power no legal liability can be created. When the bonds now in question were put out the law required that to be valid they must be certified to by the auditor of State. In other words, that officer was to certify them before their execution was complete, so as to bind the public for their payment. We had occasion to consider in McGarrahan *vs.* Mining Co. (96 U. S., 316) the effect of statutory requirements as to the form of the execution of patents to pass the title of lands out of the United States, and there say: 'Each and every one of the integral parts of the execution is essential to the validity of a patent. They are of equal importance under the law, and one cannot be dispensed with more than another. *Neither is directory, but all are mandatory.* The question is not what, in the absence of statutory regulations, would constitute a valid grant, but what the statute requires.' The same rule applies here. The object to be accomplished is the complete execution of a valid instrument, such as the law authorizes public officers to put out and bind for the payment of money the public organization they represent." By repeated adjudications this has become the settled rule of that court. Police Jury *vs.* Brit-
54 ton, 82 U. S., 566, 570, 572; Claiborne County *vs.* Brooks, 111 U. S., 400, 406; Bank *vs.* Porter Township, 110 U. S., 608, 618; Concord *vs.* Robinson, 121 U. S., 165, 167; Kelley *vs.* Milan, 127 U. S., 139, 150; Norton *vs.* Dyersbury, 127 U. S., 160, 175; Young *vs.* Clarendon Township, 132 U. S., 340; Hill *vs.* Memphis, 134 U. S., 198, 203; Merrill *v.* Monticello, 138 U. S., 673, 686, 687; City of Brenham *vs.* Bank, 144 U. S., 173; Savings Asso. *vs.* Perry County, 156 U. S., 692, 704.

But it is urged that, while the bonds were expressly issued under the act of 1879, there was, apparently unknown to both parties to the transaction, and certainly ignored by them, an existing authority

to issue said bonds derived from an ordinance of the constitutional convention passed in 1868, and that therefore we should hold that these bonds were unwittingly issued under that ordinance, and are therefore valid. The only authority we can find in that ordinance in any way authorizing the subscription to the stock of the company or the issuing of the bonds is as follows: "Section 2. That the capital stock of said company may be created by subscriptions on the part of individuals, corporations and counties, in shares of one hundred
55 dollars." "Section 12. Be it further ordained that the stockholders of said company may pay the stock subscribed by them either in money, labor or material for constructing said road, as the board of directors may determine, and that all counties or towns subscribing stock to said company shall do so in the *same manner and under the same rules, regulations and restrictions* as are set forth and prescribed in the act incorporating the North Carolina and Atlantic Railroad Company, for the government of such towns and counties as are now allowed to subscribe to the capital stock of said company." That said ordinance cannot be relied on to support the validity of the bonds at issue is apparent for several reasons: First, we do not see that any authority whatever is given or attempted to be given by either of these sections to Wilkes county to subscribe to the capital stock of this company; but it is said that section 12, by referring to the charter of the "North Carolina and Atlantic Railroad Company," by which, we presume, is meant the Atlantic & North Carolina railroad, ch. 136 of the Laws of 1852, confers upon the different counties through or near which the Northwestern North Carolina railroad may run the same authority to subscribe as was given to the counties tributary to the former company. Said section does not refer generally to the act of 1852, nor does it profess to confer any of the powers therein granted. It simply says that those counties and towns that do subscribe "shall do so in the *same manner and under the same rules, regulations and restrictions*" as are prescribed in the former act. The words "same restrictions" are peculiarly significant here, as the act of 1852, section 45, provides in express terms that "if the said road be not completed within six years after the ratification of this act *this charter shall be forfeited.*"
Therefore, even if the powers granted in the act of 1852
56 had been given to the North Western North Carolina Railroad Company, or the counties in its interest, subject to the "same restrictions," those powers would have expired by their own limitation long before their attempted exercise 23 years thereafter. As all such powers must be strictly construed, this restrictive provision must be held to be in the nature of a limitation and not a condition subsequent—that is, the authority given to the counties to subscribe, if it ever existed, expired at the end of six years unless already exercised in such a way as to create vested rights; but it makes no difference how the power was exercised if there was no power. Section 12 of the ordinance of 1868 does not refer to section 33 of the act of 1852, which confers the power, but is evidently limited by its very terms to section 34, 35, and 36, which prescribe

the *manner* in which that power must be exercised by the counties or towns to which it may have been granted. It would have been very easy for the convention to have given the same authority granted in section 33, either in express terms or by reference to said section, but it has not done so, and we cannot do so by judicial construction. There is no principle better settled than that all charters granting special privileges or powers must be not only strictly construed, but must be construed most strongly against the grantee. This rule, with the reasons therefor, has been so clearly stated by Chief Justice Pearson in Railroad *vs.* Reid, 64 N. C., 155, 158, that we can do no better than to quote his language as follows: "It is equally well settled that contracts made by the State with individuals, in granting charters, are not to be construed by the same rules as contracts between individuals. In the latter case, the rule of the common law, which is the same as common sense, is, 'Words are to be taken in the strongest sense against the party using them,' on the idea that said interest induces
57 a man to select words most favorable for himself. It is otherwise where the State is a party. For it is known that in obtaining charters, although the sovereign is presumed to use the words, in point of fact the bills are drafted by individuals seeking to procure the grant, and that 'the promoters,' as they are styled in England, or the 'lobby members,' as they are styled on this side of the Atlantic, have the charters or acts of incorporation drafted to suit their own purposes, and a matter of this kind, instead of being in its strict sense a *contract*, is more like the act of an indulgent head of the family dispensing favors to its different members and yielding to importunity. So the courts, to save the old gentleman from being stripped of the very means of existence by sharp practice, have been forced to reverse the rule of construction and to adopt the meaning most favorable to the grantor." The same rule is laid down in Railroad Co. *vs.* Canal Commissioners, 21 Pa. St. Rep., 9, 22, where Chief Justice Jeremiah S. Black says for the court: "It may be that the privilege which the relators claim might arise by implication out of their charter or some other of the acts cited by their counsel if we were at liberty to give to them the broad construction which we sometimes apply to other laws of a different character; but corporate powers can never be *created by implication nor extended by construction*. No privilege is granted unless it be expressed in plain and unequivocal words, testifying the intention of the legislature in a manner too plain to be misunderstood. When the State means to clothe a corporate body with a portion of her own sovereignty and to disarm herself to that extent of the powers which belong to her, it is so easy to say so that we will never believe it to be meant when it is not said; and words of equivocal import are so easily inserted by mistake or fraud that every consideration of justice and policy requires that they should be treated as nugatory when they do find
58 their way into the enactments of the legislature. In the construction of a charter to be in doubt is to be resolved, and every resolution which springs from doubt is against the cor-

poration. This is the rule sustained by all the court- in this country and in England. No other has ever received the sanction of any authority to which we owe much deference. This court has asserted it times without number. We have ruled five or six important cases upon it within the last year. We seem not to have made much impression on the professional mind, and we are probably making as little now. But when respectable counsel call upon us hereafter (as they doubtless will) to enlarge corporate powers by construction we can only repeat again and again that our duty imperatively forbids it. The privileges of the Pennsylvania Railroad Company may be too rigidly restricted. If the usefulness of the company would be increased by extending them let the legislature see to it. But let it be remembered that *nothing but plain English words will do it.*"

It should be borne in mind that there is no pretence of authority for the issue of these bonds outside of the charter of the Northwestern North Carolina Railroad Company and its amendments. It has been the actor as well as the beneficiary throughout, and therefore the acts under consideration come peculiarly within the rule of strict construction laid down by the two great chief justices from whom we have quoted.

We have not overlooked the fact that in Below *vs.* Commissioners, 76 N. C., 489, this court strongly intimates that section 12 of the charter did confer the authority given in section 33 of the act of 1852; but it does so incidentally and with little discussion, because it was not denied in the pleadings. This was not the determining point in the case, which turned chiefly upon the recitals in the bonds and the ratifying act of 1868. This is already shown in the
59 opinion itself, which devotes four pages to the discussion of equitable estoppel arising on the recitals and about half a page to the possible binding effect of the ordinance, winding up with the significant sentence on page 497 that "as the case is presented to us, that question does not arise and we do *not* decide it." It evidently did not receive careful investigation, as it apparently did not arise on the pleadings. The court stated that "the principle of equitable estoppel is the most important element in the transaction," and that the recitals in the bonds (which were essentially different from those now before us) constituted an estoppel *in pais* upon the county of Forsyth. Can it be questioned that estoppels must be mutual, and that he who relies upon the recitals in the bond to estop another must himself be bound by them? If this is so, it ends the case at bar, as all the recitals point to the unconstitutional act of 1879. The Forsyth County bonds recited that *they* were "authorized by an ordinance of 1868, by an order of the court of pleas and quarter sessions of Forsyth county, at June term, 1868, and re-enacted and ratified and confirmed by an act of the General Assembly ratified the 11th of August, 1868." The cases are clearly distinguishable. Another important point of difference is that the Forsyth County bonds were voted and subscribed within a few months after the passage of the ordinance, before whatever power it may have given, if any had expired by its own limitation. It is

evident that the legislature, as well as the railroad company itself, thought that the authority given in the ordinance was not sufficient, as in both cases additional legislation was sought and obtained, but with this essential difference: In the case at bar, the amendatory act, having been passed in violation of mandatory provisions
60 of the constitution in legal contemplation, was never passed. As it has no legal existence, we have no authority to construe it, but simply to obliterate it. In Jarratt *vs.* Moberly, 103 U. S., 580, 588, the court, in discussing a similar case, says: "Further legislation was needed. Such was the evident opinion of the legislature of the State, for by an additional act, passed on the 29th March, 1872, the authority was given in terms," and on page 586 it says: "A constitutional provision should not be construed so as to defeat its evident purpose, but rather so as to give it effective operation and suppress the mischief at which it was aimed."

Secondly. The bonds on their face profess to have been issued under an entirely different statute.

61 The principle laid down by the Federal authorities and practically of univeral acceptance is that estoppels rest upon the recitals in the bond. The rule is generally cited as laid down in Town of Colonia *vs.* Eaves, 92 U. S., 484, as follows: "When legislative authority has been given to a municipality, or to its officers, to subscribe to the stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with power to decide whether the condition precedent has been complied with, their recital that it has been *made in the bonds* issued by them and held by a *bona fide* purchaser is conclusive of the fact and binding upon the municipality; *for the recital is itself a decision of the fact by the appointed tribunal*" (Buchanan *vs.* Litchfield, 102 U. S., 278; Bank *vs.* Porter, 110 U. S., 608, 616).

In the case at bar the bonds recite that they were issued under the act of 1878, and as all estoppels of this nature, to be operative, must be mutual, are not the bondholders themselves estopped from setting up any facts to the contrary? These recitals point out the very act under which the power is claimed, and it was the duty of all persons claiming thereunder to see that the act met the constitutional requirements.

62 Certainly the estoppel can never go further than the recital itself. It cannot operate upon any other act, nor as to the validity of any act. In Gilson *vs.* Dayton, 123 U. S., 59, it was held that "as it appears on the face of the bonds sued on in this action that they were issued under the special act of February 18, 1857, which was held void in Post *vs.* Supervisors, 105 U. S., 667, and not under the general law of March 6, 1867, the judgment dismissing the action is affirmed." As was said in County of Daviess *vs.* Heidekoper, 98 U. S., 98, 100, "there indeed be power which, if formally and duly exercised, will bind the county or town. No *bona fides* can dispense with this, and no recital can excuse it." In

Dixon County *vs.* Field, 111 N. C., 83, 92, it was held that the estoppel arising from recitals in the face of the bonds never extended to or covered matters of law, and could arise only "upon matters of fact, which the corporate officers had authority to determine and to certify."

Thirdly. That ordinance did not create a contract between the railroad company and the county of Wilkes. The only contract that has ever existed between them was the contract of 1888, which was subject to all the constitutional provisions then existing. The mere authority given in the charter of a railroad company to receive subscriptions from municipal corporations, where no consideration is given and no attempted exercise of the power, has none
63 of the essential elements of a contract and is held at the pleasure of the law-making power. Much more so is it subject to constitutional restrictions. Town of Concord *vs.* Bank, 92 U. S., 625, 630; Concord *vs.* Robinson, 121 U. S., 165, 169; Loan Asso. *vs.* Perry County, 156 U. S., 692, 697. Concord *vs.* Bank, *supra*, was overruled in Fairfield *vs.* Gallatin, 100 U. S., 47, only in so far as it applied to the constitution of Illinois, and for the only reason that the Supreme Court of the United States deemed it proper, in the construction of a State constitution, to follow the State decisions instead of their own view of the law. The general principle remains unchanged and meets our approval.

64 The ratification of the constitution on the 24th day of April, 1868, when it went into effect for all domestic purposes, annulled all special powers remaining unexecuted and not granted in strict accordance with its requirements. Article II, section 14, is as follows: "No law shall be passed to raise money on the credit of the State or to pledge the faith of the State, directly or indirectly, for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly, and passed three several readings, which readings shall have been on three different days, and agreed to by each house respectively, and unless the yeas and nays on the second and third reading of the bill shall have been entered on the journal." Article VII, section 7, is as follows: "No county, city, town or other municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied, or collected by any officers of the same, except for the necessary expenses thereof, unless by a vote of a majority of the qualified voters therein." The intention of the constitution is obvious. Profiting by the sad experience of other States, it intended to restrict the granting of public aid, and to hold to the strictest accountability every member of the legislature who assisted in such grant by forcing him to twice record his vote on the journal where it would be open to public inspection. It further intended that every such grant should be the deliberate and intelligent act of the legislature itself, as well as of the community affected thereby. It is our duty to give to these salutary provis-

ions that just construction required alike by the rules,
65 of law and of common sense that will effectuate and not destroy their beneficial purpose. This view, we think, is sustained by the uniform decisions of the Supreme Court of the United States, the only tribunal before which this decision can ever lawfully come for review. In Wadsworth *vs.* Supervisors, 102 U. S., 534, 537 (citing and reaffirming Aspenwall *vs.* Commissioners of Davies County, 22 How., 364), the court says: "We held in that case that the popular vote did not itself create a vested right in the railroad company to the bonds, and that a subscription was necessary to create a contract binding the county to issue bonds in payment of the stock and binding the company to receive stock for the bonds. 'Until the subscription is made,' said Mr. Justice Nelson, speaking for the whole court, 'the contract is unexecuted and obligatory on neither party;' hence the new State constitution was held to govern the case, and from the time of its adoption to have withdrawn from the county commissioners all authority to make subscriptions to the stock of incorporated companies, except in the manner and under the circumstances prescribed in that instrument." In Norton *vs.* Brownsville, 129 U. S., 479, 490, Chief Justice Fuller, speaking for the entire court, says: "These cases (referring to Concord *vs.* Savings Bank, 92 U. S., 625; Falconer *vs.* Railroad, 69 N. Y., 491; Railroad *vs.* Falconer, 103 U. S., 821; Wadsworth *vs.* Supervisors, 102 U. S., 534, and Aspenwall *vs.* Commissioners, 22 Howard, 364) sufficiently illustrate the distinction between the operation of a constitutional limitation upon the power of the legislature and a constitutional inhibition upon the municipality itself. In the former case past legislative action is not necessarily effective, while in the latter it is annulled. Of course, if an entirely new organic law is adopted, provision in the schedule or some other
part of the instrument must be made for keeping in force
66 all laws not inconsistent therewith, and this was furnished in this instance by the first section of article 11, but such a provision does not perpetuate any previous law, enabling a municipality to do that which it is subsequently forbidden to do by the constitution. The inhibition being self-executing and operating directly on the municipality and not in itself enabling the latter to proceed in accordance with the rule prescribed, further legislation is necessary before the municipality can act." In the late case of Railway *vs.* Texas, 170 U. S., 226, it is held that "a clause in a charter of a railroad company granting it power to consolidate with or become the owner of other railroads is *not* such a vested right that cannot be rendered inoperative by subsequent legislation passed before the company avails itself of the power thus granted." It is useless to cite the cases themselves cited in the cases referred to herein.

It is further urged on the part of the defendants and those whom they represent that the issuing of these bonds was authorized by sections 1996 to 2000 of the Code. This question was definitely settled
in Commissioners *vs.* Snuggs, 121 N. C., 394, 400, 401, and we
67 see no reason to reverse our ruling nor do we find any facts taking this case from its operation. We can add nothing on

this point to what was therein so fully and ably said in the opinion of the court, except to say that if the construction contended for by the defendants must be placed upon those sections, then they are in direct violation of the letter and spirit of the constitution, inasmuch as they practically annul one of its essential provisions. If the word "uncompleted" can refer to any road not yet begun and the word "interest" apply to a mere friendly feeling or supposed advantage to be derived from the general building up of the country, then the several counties may go on forever subscribing unlimited amounts to any railroad *in esse* or *in futuro* that may be located within the range of their knowledge. Such a construction would simply nullify the constitution by making its explicit restrictions vain and worthless. It cannot be adopted by us, but if we were forced to adopt it we would be equally forced to declare those sections null and void. If they mean that, they have no place upon the statute books. While the legislature may, in individual cases, grant to specific counties the necessary authority in accordance with the provisions of the constitution and subject to its restrictions, it cannot, by a sweeping act of unlimited application, utterly destroy its operation. If the legislature or the railroad company or the county had placed any such construction on those sections, additional legislation would have been deemed useless and the recitals in the bonds would have been different. It is true that this road had been begun and was in one sense uncompleted when the subscription was made, but it was *not* begun when the constitution was ratified, and the county at that time had no pecuniary interest in it nor any interest contemplated by the statute.

68 It is not necessary for us to consider the fact that the first section of the road had been completed to Winston, beyond which all idea of extension seems for years to have been abandoned. The act of 1881 has no reference to the bonds in question, and is subject to the same objections as the act of 1879, which we have been discussing.

We have given this case the most thorough investigation and careful consideration on account of the important principles and the large amount involved. We deeply deplore the fact that many parties must suffer who are in morals, if not in law, innocent holders of the bonds; but their loss comes from their misplaced confidence in those from whom they received the bonds and the negligence of the corporation to which the power was professedly given and the bonds were issued. The only authority for their issue is found in a railroad charter, and we cannot undertake to validate defective or unconstitutional legislation by judicial construction. The suggestion of repudiation, so strongly urged here and elsewhere, has no weight with us. The so-called repudiation of an unconstitutional obligation is a contradiction in terms, and its assertion amounts simply to a moral and legal absurdity.

It has been said that the usual difference between heterodoxy and orthodoxy is the difference between your doxy and my doxy, and that in financial ethics the same distinction exists between stealing and financeering. This distinction we cannot endorse. It is just

as wrong to wring from an unwilling and perhaps a suffering debtor an unjust debt as it is to deprive a creditor of a just debt. We will try to do neither, but will hew to the line. The strictly moral aspect of the case is not before us, but it is possible that the plaintiffs, representing an honest, industrious, and intelligent
69 people, may have reason for their action as strong in morals as in law.

Enough appears to indicate what is common knowledge that the railroad does not touch the county of Wilkes, and that the stock for which these bonds were issued has been swept away in the maelstrom of corporate reorganization. It may be that the plaintiffs, deprived of every vestage of consideration by the decree of a court of equity, may not feel any moral obligation beyond the strict letter of the law. They may see no difference between repudiation and reorganization when both accomplish the same result to retain the benefit and shift the burden.

70 In Lewis *vs.* Pina County, 155 U. S., 54, 58, it was held that bonds issued under an act of the legislature of the Territory of Arizona which was in violation of the Revised Statutes of the United States *were void, and "created no obligation against the county which a court of law can enforce."* In the carefully considered case of Brenham *vs.* Bank, 144 U. S., 173, 182, 188, the court says: "It is easy for the legislature to confer upon a municipality, when it is constitutional to do so, the power to issue negotiable bonds, and, under the well-settled rule that any doubt as to the existence of such power ought to be determined against its existence, it ought not to be held to exist in the present case. * * * As there was no authority to issue the bonds, even a *bona fide* holder of them cannot have a right to recover upon them or their coupons." Citing Marsh *vs.* Fulton County, 10 Wall., 676; East Oakland *vs.* Skinner, 94 U. S., 255; Buchanan *vs.* Litchfi*l*ed, 102 U. S., 278; Hayes *vs.* Holley Springs, 114 U. S., 120; Davies County *vs.* Dickinson, 117 U. S., 657;
71 Hopper *vs.* Covington, 118 U. S., 148, 151; Merrill *vs.* Monticello, 138 U. S., 673, 681, 682.

The current of authority from other States sustains the conclusions we have reached in this case, but owing to the large number of cases we have thought it best to cite only from our own decisions and those of the Supreme Court of the United States.

For the reasons stated in this opinion, the judgment of the court below is affirmed.

72 FURCHES, *J.*, dissenting:

On the 9th of March 1868, the constitutional convention of North Carolina passed an ordinance chartering and authorizing the formation of a corporation to be known as the "North Western North Carolina Railroad Company." Under this charter said company was formed and organized, and on the 25th of March, 1868, the county of Forsyth subscribed $100,000 to said corporation, which subscription was held to be valid in Hill *vs.* Commissioners, 67 N. C., 367. In payment of this subscription the county of Forsyth issued coupon bonds to the amount of $100,000, and they were held to be

valid against the county in Belo *vs.* Commissioners, 76 N. C., 489, and the work of constructing said road between Greensboro, in the county of Guilford, and Winston, in the county of Forsyth, was commenced. This part of the road was completed and put into operation within the next few years and has continued to be run and operated ever since.

This charter made Winston a point to which the road should run west of its starting point on the North Carolina railroad. From this point (Winston) it was authorized to build branch roads, but none were built until 1887, when the company proposed to build a branch of its road from Winston to or near Wilkesboro, in Wilkes county, provided Wilkes county would make a subscription of $100,000 to the capital stock of said company.

This proposition to subscribe $100,000 to the capital stock was submitted to the qualified voters of said county by the commissioners thereof; the vote taken, a majority of the whole qualified voters of said county voted for the subscription. The subscription was made and the road built to Wilkesboro in compliance with the agreement of the railroad company, and the bonds now asked to be declared invalid were issued by the county, delivered to the
73 railroad company, and the interest thereon regularly paid until the commencement of this action. All these facts are shown by the record and are admitted to be true. But there having been a change in the personnel of the board of commissioners since said bonds were issued and since said road was built, this new board is seeking in this action to repudiate the action of the former board.

I understand the court to rest its opinion on two grounds: the want of power in the commissioners to submit the proposition to the voters and to issue the bonds and the doctrine of estoppel. If there is error in these positions, I shall contend that the conclusion to which the court has arrived is erroneous and should be reversed.

I admit that if the commissioners had no legislative authority to submit the proposition of subscription to the voters of Wilkes that these bonds are void and the judgment of the court is correct, but I propose to show that they had this authority and that the bonds are valid.

The charter (the ordinance of the convention) in express terms makes the charter of the Atlantic & North Carolina Railroad Company a part of the charter of the North Western North Carolina Railroad Company so far as it relates to the subscription of counties to the capital stock of the company. This being so, the charter of the Atlantic and North Carolina Railroad Company is to be read and considered as a part of the charter of the North Western North Carolina Railroad Company. Range Co. *vs.* Carver, 118 N. C., 328; Commissioners *vs.* Higginsbothern, 17 Kansas, 62. It is like an instrument referring to another instrument—Flaum *vs.* Wallace, 103 N. C., 296—or where the complaint in one action refers to the complaint in another action for data—Alexander *vs.* Norwood, 118 N. C., 381—they are to be read and considered together as one instrument.

74 I have shown that the subscription made to this company (the North Western North Carolina Railroad Company) by the county of Forsyth under the charter as originally passed has been sustained and held to be valid by this court in Hill *vs.* Commissioners, *supra.*

This decision established the power—the authority—to submit the proposition of subscription to the voters of the county and to issue bonds. But the validity of the bonds issued on this subscription of Forsyth was again put directly in issue in the case of Belo *vs.* Commissioners of Forsyth in a mandamus proceeding to compel their payment, and their legality was again sustained by this court. Belo *vs.* Commissioners, 76 N. C., 489. This case also, as I contend, established the authority to submit the question to the voters and to issue these bonds.

It is true that the submission of this question in Forsyth was made by the justices of the peace acting as a county court, and it is true that the charter provides that the question should be submitted by them, but this charter was passed and this submission was made and bonds issued before the adoption of the constitution of 1868, which did not go into effect until the 22nd of April of that year. By this constitution and subsequent legislation the county court was abolished, and the county commissioners succeeded to their powers in this matter and in all such cases. It is so held by this court in Belo *vs.* Commissioners, *supra*, and it is expressly so provided by the legislature. Section 1997 of the Code.

Therefore, while the submission of the question in Wilkes was by the commissioners, they were the successors of the justices and the county court, fully and clearly authorized to make the submission and the subscription, and to issue the bonds.

75 But it is contended by the court that if the charter authorized this subscription and the issue of the bonds now sought to be repudiated that it was passed before the constitution of 1868 went into effect, and that it was thereby repealed. To support this position Aspenwall *vs.* Commissioners of Davisse County, 22 Howard, 364, and Lewis *vs.* Pima County, 155 U. S., 54, are cited by the court. Neither of these cases, in my opinion, sustain the position for which they are cited. The first case cited (22 Howard) is intended to raise the question of violating a contract under the Constitution of the United States, and nothing more. The submission in that case was made and the vote thereon was had in 1849, but the subscription to the capital stock was not made, and the bonds were not issued until 1852. In the meantime the constitution of the State (Indiana) had been amended so as to prohibit any county in the State from issuing such bonds. But Davisse county proceeded to issue the bonds under said submission and vote and to put them on the market, but afterwards refused to pay them, and the plaintiff, being the holder of a part of these bonds, undertook to enforce their payment. There was no question made in that case but what the constitution had inhibited their issue. But the plaintiff claimed that the submission and the vote thereon, which were before the amended constitution, amounted to a con-

tract, and that the new constitution, which prohibited the county from issuing the bonds, was an impairment of the obligation of this contract, and therefore in violation of the Constitution of the United States. No such question as this arises in this case. There is no pretense that these bonds are protected by any provision of the Constitution of the United States.

But it is denied by the defendants that the constitution of 1868 repealed the charter of this road or that it prohibited Wilkes county from making this subscription or from issuing these bonds, as I expect to show.

76 The case of Lewis *vs.* Pina County arose out of the legislation of Arizona Territory. The legislature of this Territory passed an act authorizing Pina county to issue bonds for the construction of a railroad. This being a territorial government, it had no legislative powers except those granted by Congress. And it was held in that case that Congress had not only failed to grant such legislative power, but had in express terms prohibited its exercise, and the bonds were held to be void. I failed to see the argument to be drawn from this case against the validity of the bonds under consideration. As has been stated, the charter of the North Western North Carolina railroad was passed before the adoption of the constitution of 1868, which took effect on the 22nd of April of that year. But the legislature passed an act ratified on the 11th of August, 1868, as follows:

"SECTION 1. The General Assembly of North Carolina do enact, That an ordinance entitled 'An ordinance to incorporate the North Western North Carolina Railroad Company,' ratified the 9th day of March, A. D. 1868, be, and the same is hereby re-enacted, ratified, and confirmed."

If there had been a repeal of this charter by the constitution, which I contend there had not been, it seems to have been expressly re-enacted in August, 1868.

It has not escaped my attention that there is in the printed record an agreement as to what acts are to be considered by the court in deciding this case, and the act of 1868 is not one of those named. This agreement is signed by the counsel for plaintiffs and by counsel for Mr. Turner and Mr. Welborne, but it is not signed by any one for the defendant Call. But if it had been signed by Call, I would have to disregard it. Parties may agree upon facts that I would feel bound by, but I cannot feel bound by an agreement as

77 to what is the law. I refer to this act of 1868 for the purpose of meeting an argument in the opinion of the court, and not for the reason that I consider it necessary to sustain the position I have taken as to the authority of the commissioners of Wilkes county to submit this question to the voters, and to subscribe the stock, and to issue the bonds.

The charter provides for submitting the question to a vote of the people in almost, if not the language of the constitution of 1868, with the single exception that it shall be sufficient if a majority of the qualified voters "voting thereon shall be in favor of the subscription." To this extent and no further did the constitution of

1868 conflict with the provisions of this charter, and this was cured by section 1997 of the Code, which was admitted to have been passed as the constitution requires, and which provides that it shall take a majority of the qualified voters of the county to authorize the subscription, as was done in this case. Suppose that section 1997 of the Code had been passed by the legislature as an amendment to this charter, with all the formalities and requirements of the constitution, would it be contended that the submission was without legislative authority and that these bonds were void; and, if not, why is it that a general law applying to all cases of submission has not the same effect?

The next ground upon which the court rests its opinion is that of estoppel. This ground of alleged invalidity to the bonds arises in this way: The legislature at its February session, 1879, attempted to pass and did pass an act providing for the extension of the North Western North Carolina railroad from Winston to Wilkesboro, for the subscription of counties to its capital stock, and the issue of bonds, but it is claimed by the plaintiff, and such appears to be the fact, that this act did not receive the three several readings on three several days with a call of the yeas and noes, as provided by the constitution, and for that reason that the said
78 act is void under Bank *vs.* Commissioners, 119 N. C., 214, and Commissioners *vs.* Snuggs, 121 N. C., 400; but the commissioners, when they issued these bonds, did not know that this act was unconstitutional and void, and they recited in the bonds that they were issued under the act of 1879. This act does not purport to be an original act, but it is stated in the act itself that it is an amendment to the ordinance of the convention chartering said road. So that any one seeing these bonds would be led by the statements therein to know that they depended upon authority derived from the original charter—that is, the ordinance of the convention of 1868; and it is claimed in the opinion of the court that this recital in the bonds, put there by the plaintiffs, estops the holders and those representing them from showing any other authority in the commissioners except the act of the 20th of February, 1879, and that that act being void, for the reasons heretofore stated, the commissioners had no power to issue the bonds. I admit that this act is a nullity and cannot benefit the bondholders; and, as it is void and can do them no good, it can do them no harm.

The court therefore, upon this recital in the bonds that they were issued under the act of February 20, 1879, again rests its judgment upon the doctrine of estoppel, and holds that the bondholders and the defendants in this action are estopped to show that the commissioners had any other authority except the said act of 1879.

With the greatest respect and deference to the opinion of the court, it seems to me that the doctrine of estoppel is not only misapplied, but that its use and purpose are misconceived in this application by the court. Estoppels are as to facts, and not of law. In such transactions as this they are made to apply to a party stating the facts, and not to the party to whom they are stated. This seems to me to be elementary learning; but see Bigelow on Estop-

pel, pages 4, 5, 6, and 7, and 356, and note 1: "It is not the
79 deed of the defendant, but of Isham (the grantor) only, by whom alone it is executed; and not being the deed of the defendant, it cannot, as a deed, estop him from denying that the grantor had title." And the same principle is held in the case of Northern Bank *vs.* Porter Township, 110 U. S., 608, near the end of the opinion (cited by the court). In that case the bondholder was trying to estop the maker by holding him to the statements in the bond, and the court says that the maker is estopped by the recital of such facts as it was supposed to have special knowledge of, such as that there had been a submission to a vote, and that a majority of the qualified voters voted for the bonds. But it was held that the defendant (the maker) was not estopped to show the law—to show that the township had no legal authority to make the subscription and to issue the bonds. If the maker of the bonds was not estopped by the recitals in the bond from showing the want of legal authority to make the bonds, what rule of law or justice is there to estop the defendants in this case from showing that the commissioners of Wilkes county had the power — legal authority to issue these bonds?

It is said in the opinion of the court that "estoppels are mutual," and as the plaintiff would be estopped by the recitals that the defendant must be. This rule obtains in many instances, but I deny its application in this case, as I have shown above from Bigelow on Estoppel and from Northern Bank *vs.* Porter Township. But were I to admit the rule to be that where one party is estopped the other party is also, what would be the result of the reasoning of the court when I have shown that the maker would not be estopped to show the want of power?

The court in its opinion says that certain positions were strenuously insisted on by the defendant. I think this must be a mis-
80 take, as the case was not argued before us, either by brief or by oral argument, on behalf of the defendants. Mr. Turner and Mr. Welborn, by leave of court, made themselves parties defendant after the action was brought, but they have given the case no further attention. Why they did this I do not know. The case appears to be a controversy so far as parties are concerned, for there are plaintiffs and there are defendants. But as to the conduct of the case before this court is concerned it has been unilateral. The opinion of the court speaks of the reorganization of the railroad company, thereby defrauding some one out of his stock. The record furnishes no evidence of any reorganization of the railroad company. It is stated in the opinion of the court that the Supreme Court of the United States is the only court authorized to review this opinion. I agree with the court in this expression of opinion, but I have no idea that it will ever be reviewed by that court, as the case is decided in favor of plaintiffs, and the defendants have not taken interest enough in it to be represented by counsel, and it is not likely they will appeal.

It is said that the talk of repudiation has had no effect on the court, and I have no idea that it has, and I hope that my aversion

to repudiation has had no influence on me in coming to the conclusions I have reached.

My opinion is that the bonds are valid and that their payment should be enforced by the courts.

FAIRCLOTH, C. J.: I concur in the dissenting opinion.

81 September Term, 1898.

Judgment.

This cause came on to be argued upon the transcript of the record from the superior court of Wilkes county; upon consideration whereof this court is of opinion that there is no error in the record and proceedings of the said superior court.

It is therefore considered and adjudged by the court here that the opinion of the court, as delivered by the Honorable R. M. Douglas, justice, be certified to the said superior court, to the intent that the judgment be affirmed, and it is considered and adjudged further that the defendants do pay the costs of the appeal in this court incurred, to wit, the sum of twenty-four $\frac{30}{100}$ dollars ($24.30), and let execution issue therefor.

82 North Carolina Supreme Court.

I, Thomas S. Kenan, clerk of the supreme court of the State of North Carolina, do hereby certify the foregoing to be a full, true, and correct transcript of the action entitled The Board of Commissioners of Wilkes County and C. C. Wright against Clarence Call, treasurer of Wilkes county, and J. M. Turner and J. M. Wellborn, as appears of record in this court.

In witness whereof I have hereto set my hand and affixed the seal of said court, at office, in Raleigh, this 30th day of November, 1898.

[Seal of the Supreme Court of the State of North Carolina.]

THOS. S. KENAN,
Clerk of the Supreme Court.

83 Supreme Court of the United States, October Term, 1898.

J. M. TURNER and J. M. WELBURN, Plaintiffs in Error,
vs.
THE BOARD OF COMMISSIONERS OF WILKES COUNTY and C. C. Wright, Defendants.

In error to the supreme court of North Carolina.

The undersigned, Richard N. Hackett and A. C. Avery, representing as counsel, respectively, the plaintiff- in error and the defendant above named, have observed that Justice Furches, in his dissenting opinion, calls attention to the fact that they omitted specifically to mention the act of August, 1868, as one of the statutes purporting to authorize the commissioners of Wilkes county to create the

bonded debt which gives rise to the controversy, and deem it due to themselves to submit a statement by way of explanation.

Out of the abundance of caution, counsel had filed certified copies of extracts from the legislative journals and certificates of the secretary of state, as custodian of the journals, showing the failure to pass certain other amendments to the charter of the North Western North Carolina Railroad Company in the manner prescribed by sec. 14, art. 2, of the constitution; but those records and certificates had cost the county from twenty-five to fifty dollars each. It had not been directly decided in North Carolina that the printed journals of the legislative houses would be competent evidence, though it had been so held in construing similar provisions of the constitution and laws of Illinois.

It appeared from an inspection of the Journals of the Senate of North Carolina of the Session of 1868 that on the 24th day of July, 1868 (see page 97, printed Journals of Senate of 1868), senate bill 45, "A bill ratifying and confirming the charter of the North Western North Carolina Railroad Company," was considered in committee of the whole and reported by the committee recommending its
84 reference to the committee on internal improvements; that on the 25th day of July, 1868, Mr. Forlkner, for said committee, reported said bill back to the senate and recommended its passage (see printed Senate Journal, page 101), and that no further action was taken on said bill until July 27th (see pages 101 to 108, both inclusive, of said printed Journal of the Senate), when the following entry appears: "The report of the committee on internal improvements, to whom was referred—

S. 45, a bill ratifying and confirming the charter of the North Western North Carolina Railroad Company was taken up and concurred in by the senate.

The bill passed its third and final reading by the following votes: * * *"

The language above quoted from the journals is followed by a statement of the names of 33 senators voting yea, and that there were no nays. The undersigned were unable to find any evidence in the journals that the said bill had been passed by the senate on its second reading and on a call of the yeas and nays on a day different from that on which it passed its third reading in said body.

The undersigned find (see page 109 of the printed Journal of the House at the same session) that on the 28th day of July the said bill was transmitted to the house of representatives, and that on August 11th, the following account is recorded of its passage on the third reading, to wit:

"The senate bill to ratify the charter of the North Western North Carolina Railroad Company passed its third reading."

The undersigned find also that on the 11th day of August, 1868, said bill was enrolled and was signed by the speaker and was transmitted to the senate, and that therefore the act referred to by Justice Furches was not passed in the manner prescribed by the constitution.

The undersigned therefore submit, as an explanation of
85 the omission to which Justice Furches calls attention, that they did not deem it necessary to subject the county of Wilkes to the expense of offering the certified record of legislative proceedings, for the reason that the question whether an act not passed in conformity to the said requirement of the constitution was valid had already been raised after the act of 1879 recited as authority for issuing the bonds, and if the court should hold the act of 1879 invalid, the act of August, 1868, passed after the ratification of *of* the constitution of 1868, would also be held invalid, but if the court should hold that the act of 1879 was valid as authority for issuing the bonds, it would be unnecessary to look for further authority in the acts of 1868.

Respectfully submitted.

RICHARD N. HACKETT,
For Plaintiffs in Error.
A. C. AVERY, *For Defendants.*

[Endorsed:] J. M. Turner and J. M. Welburn, plaintiffs in error, *vs.* The Board of Commissioners of Wilkes County and C. C. Wright, defendants. Agreement of counsel. Filed —day of ——, 1899.

86 [Endorsed:] File No. 17,227. Supreme Court U. S., October term, 1898. Term No., 642. J. M. Turner *et al.*, pl'ffs in error, *vs.* The Board of Commissioners of Wilkes Co. *et al.* Agreement of counsel in regard to statement in dissenting opinion in court below. Filed Jan. 30, 1899.

Endorsed on cover: File No. 17,227. North Carolina supreme court. Term No., 642. J. M. Turner and J. M. Wellborn, plaintiffs in error, *vs.* The Board of Commissioners of Wilkes County and C. C. Wright. Filed December 19, 1898.